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ADMINISTRATIVE RECORD  
COVER SHEET

AR File Number 3243

# Kelly Restoration Advisory Board (RAB) Special RAB Meeting

## Final Meeting Agenda

12 September 2006

Port Authority of San Antonio – Main Conference Room

143 Billy Mitchell Blvd., Bldg 43, Suite 6

San Antonio, TX 78226

**6:30 – 6:40 Introduction**

**Mr. Jose Martinez**

- A. Pledge of Allegiance
- B. Moment of Silence
- C. Overview
- D. Roll Call
- E. Agenda Review
- F. Packet Review

**6:40 – 6:50 Public Comment**

*Comments limited to four minutes*

**Community Members**

**6:50 – 8:00 DoD Final RAB Rule  
32.CFR Part 202**

**Ms. Sonja Coderre**

**8:00 – 8:30 Questions and Answers**

**Community Members**

**8:30 – 8:40 Public Comment**

*Comments limited to four minutes*

**Community Members**

**8:40 Adjournment**

**Notes:** **Next RAB Meeting:** 10 October 2006, 6:30 p.m. : Port Authority of San Antonio, Main Conference Room, 143 Billy Mitchell Blvd., Bldg.43, Suite 6

**September 12, 2006**  
**Kelly Restoration Advisory Board (RAB)**  
**Special RAB Meeting**  
**Port Authority of San Antonio**  
**143 Billy Mitchell Blvd., Bldg. 43, Ste. 6**  
**San Antonio, Texas 78226**

**DRAFT Meeting Minutes**

**RAB Community Member Attendees:**

Robert Silvas, Community Cochair  
Rodrigo Garcia, Jr., community RAB member  
Henrietta LaGrange, community RAB member  
Nazirite Perez, community RAB member  
Armando Quintanilla, community RAB member  
Michael Sheneman, community RAB member

**RAB Government Member Attendees:**

Adam Antwine, Installation Cochair  
Sal Aguiñaga, Port Authority of San Antonio  
Melanie Ritsema, San Antonio Metropolitan Health District (SAMHD)  
Gary Miller, Environmental Protection Agency (EPA)  
Mark Weegar, Texas Commission on Environmental Quality (TCEQ)

**Other Attendees:**

Jose Martinez, Facilitator  
Tamara Bolch  
Don Buelter, Air Force Real Property Agency (AFRPA)  
Sonja Coderre, AFRPA  
Kyle Cunningham, SAMHD (Alternate for Melanie Ritsema)  
Alan Ferrell, SAMHD  
Michelle Guajardo, student  
Lauren Harris  
Linda Kaufman, SAMHD  
Samantha Lopez, student  
Eddie Martinez, AFRPA Contractor  
Sam Murrah  
Abigail Power, TCEQ (Alternate for Mark Weegar)  
Heather Ramon-Ayala, AFRPA Contractor  
Nanette Ryan, Lackland Inn  
Megan Trevino, student

The meeting began at 6:33 p.m.

**I. Introduction – Eddie Martinez/Jose Martinez**

- A. Mr. Eddie Martinez called the meeting to order and led the Pledge of Allegiance.
- B. Mr. E. Martinez called for a moment of silence, and then introduced the new facilitator, Jose Martinez.
- C. Mr. J. Martinez gave the audience an overview of his background and facilitator qualifications.
- D. Mr. J. Martinez reviewed the 12 September 2006 Kelly RAB agenda, and pointed out a) the agenda was final and b) the meeting was a Special RAB to discuss the DoD Final RAB Rule.
- E. Mr. J. Martinez conducted Roll Call to determine RAB members in attendance.

Community RAB members in attendance were: Henrietta LaGrange, Rodrigo Garcia, Jr., Nazirite Perez, Armando Quintanilla, Michael Sheneman and Robert Silvas.

F. Mr. Martinez conducted a meeting packet review. Items included in RAB packets are listed as attachments. During the packet review, Mr. J. Martinez referred to the Kelly RAB Charter and a one-page handout from the packet that outlined rules of conduct and Board Member's Guiding Principles. Mr. Perez said Mr. J. Martinez was trying to prevent community members from expressing their opinions. Mr. J. Martinez replied that everyone was entitled to express their views as long as they engaged in two-way discussions and let others form their own opinions before making anything final.

## **II. Public Comment**

A student community member from the audience asked what the purpose of the Kelly RAB was, and what topics were typically discussed at RAB meetings. Mr. J. Martinez stated the evening's meeting was a Special RAB meeting to discuss the Final RAB Rule, and the evening's discussions were not indicative of a typical RAB meeting.

Mr. Quintanilla brought up issues regarding the proposed rule, and Mr. J. Martinez clarified the draft rules are gone, and the point of the meeting was to discuss the Final Rule.

Ms. Nanette Ryan stated the student's question about the function of RAB members was not properly addressed. Ms. Coderre gave a brief overview of the purpose of the Kelly RAB, and then Kelly RAB community members addressed the audience about why they are involved in the RAB. Kelly RAB government members also explained the role of their agency in working with the community and the Air Force.

## **III. DoD Final RAB Rule, 32 CFR Part 202 Presentation – Ms. Sonja Coderre**

A copy of this presentation was provided in RAB member meeting packets.

Ms. Coderre began her presentation by going over the history of the Kelly Restoration Advisory Board, and reviewed some of the key terms used within the Proposed and Final RAB rules. Ms.

Coderre then discussed the fourteen sections of the Final Rule. Following the discussion of the fourteen sections of the Final Rule, Ms. Coderre reviewed the Kelly RAB Charter along with addendums that modified the original charter, including the map approved by the Kelly RAB to establish the affected area.

Ms. Coderre stated the Final RAB Rule and the existing Kelly RAB Charter conflicted in two main areas: a) the appointment process and b) RAB member eligibility. Mr. E. Martinez distributed information to RAB members discussing the two major conflicts discussed regarding the selection panel and eligibility, and Ms. Coderre asked all RAB members to submit the attached form no later than 29 September 2006 to determine eligibility criteria.

Ms. Coderre referenced a letter in the meeting packets which was mailed to city council members, EPA, TCEQ, etc. asking for recommendations of people who could serve on the selection panel. RAB members were encouraged to submit names prior to 29 September 2006. Ms. Coderre stated the goal was to have the Selection Panel submit a list of RAB members by 20 October 2006, and notify approved RAB members by 23 October 2006, in order to hold a new RAB member orientation prior to the January 2007 quarterly RAB meeting.

Mr. Quintanilla asked AFRPA staff to describe what the Kelly Community Relations Plan says about the affected community. AFRPA staff stated the Kelly affected community was defined by the Kelly RAB in the form of a map, which was included in the meeting packets as an addendum to the Kelly RAB Charter.

Mr. Silvas asked if consideration would be given to people who are not within the affected area if there is not sufficient interest from people within the affected area to serve on the Kelly RAB. Ms. Coderre noted that comment would be taken into consideration.

Mr. Quintanilla said he would discuss eligibility criteria with members of the city council and the Mayor of San Antonio, and go by the mayor's ruling.

Mr. Garcia made comments about the Kelly Community Relations Plan (CRP) and said he would provide a list of ideas to the Air Force to attract more people to RAB meetings.

Because she indicated she wanted to speak during the public comment period, but had to leave soon, Mr. J. Martinez gave Ms. Nanette Ryan an opportunity to address the RAB before the actual public comment period began. Ms. Ryan stated she was appalled at the lack of respect from the RAB community members when addressing Ms. Coderre, and interrupting the facilitator. She said Ms. Coderre didn't make changes to the Final RAB rule, but was just doing her job in carrying out decisions made by the Department of Defense (DoD). She stated the existing RAB is not a group she would want representing the public and she would never attend another RAB meeting. Mr. Quintanilla stated he was also appalled at the Air Force for contaminating his property. Mr. Sheneman stated Ms. Ryan brought out the problem the RAB was having getting people to attend meetings in the first place.

Mr. Silvas discussed several letters addressing Agent Orange, and said he would submit the documents to Mr. Antwine.

Mr. Quintanilla asked if the Kelly RAB could rescind the affected area as defined in the Kelly RAB Charter, and expand the affected area to include the entire City of San Antonio. Ms. Coderre said the Charter could be amended following the rules of amendment. Ms. LaGrange also suggested the affected area be expanded to include all of San Antonio. Ms. Coderre stated the Kelly RAB had gone to great lengths during 2002, and prior to 2002, to define the affected community and to put language into the RAB Charter addendum that ensured representation from the affected community. Ms. Coderre also stated the Final Rule stated very clearly that the selection panel process must ensure RAB members reflect the diverse interests of the community. Mr. Garcia indicated he believed eligibility should be extended to the entire city. Mr. Garcia said the area should be extended because of air contamination. Mr. Antwine stated air pollution related to past practices can't be measured today; and based on laws which regulate the Kelly cleanup program, issues such as air pollution and Agent Orange have no relevance to the Kelly cleanup program and RAB.

Mr. Quintanilla said the Air Force was not in compliance with meeting frequency. Ms. Coderre replied that the Kelly RAB Charter required quarterly RAB meetings, and the Kelly RAB was in full compliance of this requirement

Ms. Melanie Ritsema announced a Kelly Area Collaboration (KAC) Health Roundtable would take place from 8:30 a.m. to 1:00 p.m., 23 September 2006 at Dwight Middle School. Mr. Antwine announced an Economic Roundtable was tentatively scheduled for 28 October 2006.

Mr. Silvas stated he had corrections for meeting minutes dated October 2005 through July 2006, and he would be submitting those corrections to AFRPA.

Mr. Garcia stated he understood why some people would become frustrated at heated discussions which take place at RAB meetings, but the subjects discussed were emotional, and people need to deal with it.

#### **IV. Public Comment**

Mr. J. Martinez announced the opportunity for public comments.

Ms. Kyle Cunningham stated the San Antonio Metropolitan Health District (SAMHD) had placed several air monitors in the community and would be gathering data.

Mr. Garcia made a motion for SAMHD to provide him with information on who funded the air monitors, where they put them, and how they're functioning so that he can take that data to the congressional delegation and find out why the Air Force didn't fund it. Mr. Cunningham stated she would get Mr. Garcia that information, but emphasized the air monitoring was for current emissions, not past emissions, which is why the Air Force could not fund the project.

#### **V. Meeting Adjournment**

The meeting adjourned at 9:03 p.m.



<b>DISCUSSION</b>	<b>DIALOGUE</b>
The individual's goal is often to bring others over to his or her way of thinking.	The group's goal is to explore and expand understanding of a topic and incorporate varied perspectives.
Individuals present and defend their views.	The focus is on listening to one another, putting aside one's own views in order to fully listen to others.
There is a search for the best view to support a decision or action	There is a free-flowing exploration of the complexities of an issue.
There is a back-and-forth discussion of differing and often opposing views.	People are not primarily in opposition, but looking for deeper insight and clarity.
Controversial topics often become sources of tension.	Controversial topics become discussable because participants are seeking to increase their understanding and because they care about each other.
There is a constant flow of conversation with someone always speaking.	The pace of the conversation varies with times of silence for thinking and absorbing what has been said.

Peter Senge, *The Fifth Discipline: The Art and Practice of the Learning Organization* (NY: Doubleday, 1990, pp. 239-43.



## ***Air Force Real Property Agency***

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# **Department of Defense Restoration Advisory Boards Final Rule**

Ms. Sonja Coderre



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## ***Agenda***

- RAB History
- The Final Rule
  - Definitions
  - Section-by-Section
- The Kelly RAB Charter (operating procedures)
- Conflicts between the Final Rule and Kelly RAB operating procedures
- Course of Action



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## ***RAB History***

- The Defense Environmental Restoration Program (DERP) was established in 1986 to “carry out a program of environmental restoration of facilities under the jurisdiction of the Secretary”
- The Department of Defense (DoD) issued RAB guidance for closing installations in September 1993
- DoD and the Environmental Protection Agency jointly issued Restoration Advisory Board Implementation Guidelines in September 1994

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## ***RAB History***

- The Kelly RAB was converted from a TRC to a RAB in 1994
- The Kelly RAB Operating Procedures (Charter) were approved as amended in July 1998
- The Kelly RAB Operating Procedures (Charter) were updated, approved, and amended in November 2002

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## ***RAB History***

- DoD published the Proposed RAB Rule in the Federal Register January 28, 2005
  
- DoD published the Final Rule in the Federal Register May 12, 2006

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## ***The Final Rule***

- Implements 10 U.S.C. 2705 (d)(2)(A), which requires the Secretary of Defense to prescribe regulation regarding RABs
- Published in the Federal Register May 12, 2006
- Effective May 12, 2006
- Applies to all RABs regardless of when the RAB was established
- Organization
  - Preamble – Summary of Rule and Response to Comments
  - Rule

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## ***Final Rule Definitions (1 of 5)***

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- Community RAB member
    - Shall mean those individuals identified by community members and appointed by the Installation Commander to participate in a RAB who live and/or work in the affected community or are affected by the installation's environmental restoration program.
  - Environmental restoration
    - Shall include the identification, investigation, research and development, and cleanup of contamination from hazardous substances, including munitions and explosives of concern, and pollutants and contaminants.
  - Installation
    - Shall include active and closing DoD installations and formerly used defense sites (FUDS).
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## ***Final Rule Definitions (2 of 5)***

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- Installation Commander [Senior Representative]
    - Shall include the Commanding Officer or the equivalent of a Commanding Officer at active installations; the Installation Commander or other Military Department officials who close the facility and are responsible for its disposal at Base Realignment and Closure (BRAC) installations; or the U.S. Army Corps of Engineers Project Management District Commander at FUDS.
  - Public participants
    - Shall include anyone else who may want to attend the RAB meetings, including those individuals that may not live and/or work in the affected community or may not be affected by the installation's environmental restoration program but would like to attend and provide comments to the RAB.
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## ***Final Rule Definitions (3 of 5)***

- Stakeholders
  - Are those parties that may be affected by environmental restoration activities at an installation, including family members of military personnel and civilian workers, local and state governments and EPA for NPL properties, tribal community members and indigenous people, and current landowners, as appropriate.
- Tribes
  - Shall mean any Federally-recognized American Indian and Alaska Native governments as defined by the most current Department of Interior/ Bureau of Indian Affairs list of tribal entities published in the Federal Register pursuant to Section 104 of the Federally Recognized Tribe Act.

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## ***Final Rule Definitions (4 of 5)***

- RAB adjournment
  - Shall mean when an Installation Commander, in consultation with the Environmental Protection Agency (EPA), state, tribes, RAB members, and the local community, as appropriate, close the RAB based on a determination that there is no longer a need for a RAB or when community interest in the RAB declines.

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## ***Final Rule Definitions (5 of 5)***

- RAB dissolution
  - Shall mean when an Installation Commander, with the appropriate Military Component's Environmental Deputy Assistant Secretary's approval, disbands a RAB that is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects. Installation Commanders are expected to make every reasonable effort to ensure that a RAB performs its role as effectively as possible and a concerted attempt is made to resolve issues that affect the RAB's effectiveness. There are circumstances, however, that may prevent a RAB from operating effectively or fulfilling its intended purpose.

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## ***Final Rule Preamble***

- Discusses each rule section and comments and responses
  - 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 DoD's intent for the rule.

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## ***Final Rule***

- 202.1 Purpose, scope, definitions and applicability
- 202.2 Criteria for establishment
- 202.3 Notification of formation of a Restoration Advisory Board
- 202.4 Composition of a RAB
- 202.5 Creating a mission statement
- 202.6 Selecting co-chairs
- 202.7 Developing operating procedures
- 202.8 Training RAB members
- 202.9 Conducting RAB meetings
- 202.10 RAB adjournment and dissolution
- 202.11 Documenting RAB activities
- 202.12 Administrative support and eligible expenses
- 202.13 Technical assistance for public participation
- 202.14 Documenting and reporting activities and expenses

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## ***202.1 Purpose, scope, definitions and applicability***

- The purpose of a RAB is to provide:
  - Opportunity for stakeholder involvement in environmental restoration process at DoD installations.
  - Forum for early discussion and continued exchange of environmental restoration program information between DoD, regulatory agencies, tribes, and the community.
  - Opportunity for RAB members to review progress, participate in dialogue with, and provide comments and advice to installation's decision makers concerning environmental restoration matters.
  - Forum for addressing issues associated with environmental restoration activities. Environmental groups or advisory boards that address issues other than environmental restoration activities are not governed by this regulation.

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## **202.2 Criteria for establishment**

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- A RAB should be established when there is sufficient and sustained community interest, and any of the following criteria are met:
    - The closure of an installation involves the transfer of property to the community,
    - At least 50 local citizens petition the installation for creation of a RAB.
    - Federal, state, tribal, or local government representatives request the formation of a RAB, or
    - The installation determines the need for a RAB.
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## **202.2 Criteria for establishment**

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- The installation shall have lead responsibility for forming and operating a RAB.
  - In accordance with 10 U.S.C. 2705(d)(1), a RAB may fulfill the requirements of 10 U.S.C. 2705(c), which directs DoD to establish TRCs. DoD recommends that, where TRCs or similar advisory groups already exist, the TRC or similar advisory group be considered for conversion to a RAB, provided there is sufficient and sustained interest within the community.
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### **202.3 Notification of formation of a Restoration Advisory Board**

- Prior to establishing a RAB, an installation shall notify potential stakeholders of its intent to form a RAB. In announcing the formation of a RAB, the installation should describe the purpose of a RAB and discuss opportunities for membership.

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### **202.4 Composition of a RAB**

- At a minimum, each RAB shall include representatives from DoD and the community. RAB community membership shall be well balanced and reflect the diverse interests within the local community.
  - Government representation.
    - The RAB may also include representatives from the EPA at the discretion of the Regional Administrator of the appropriate EPA Regional Office, and state, tribal, and local governments, as appropriate. At closing installations where BRAC Cleanup Teams (BCT) exist, representatives of the BCT may also serve as the government representative(s) of the RAB.

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## **202.4 Composition of a RAB**

- **Community representation.**
  - Community RAB members should live and/or work in the affected community or be affected by the installation's environmental restoration program. While DoD encourages individual tribal members to participate on RABs, RABs in no way replace or serve as a substitute forum for the government-to-government relationship between DoD and Federally-recognized tribes.

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## **202.4 Composition of a RAB**

- To support the objective selection of community RAB members, installations will use a selection panel comprised of community members to nominate community RAB members. The Installation Commander, in consultation with the state, tribal, and local governments and EPA, as appropriate, will identify community interests and solicit names of individuals who can represent these interests on the selection panel. The panel will establish the procedures for nominating community RAB members, the process for reviewing community interest, and criteria for selecting community RAB members. The panel will transmit the list of RAB nominees to the Installation Commander for appointment.

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## ***202.4 Composition of a RAB***

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- Following the panel nominations, the Installation Commander, in consultation with the state and EPA, as appropriate, will review the nominations to ensure the panel fairly represents the local community. The Installation Commander will accept or reject the entire list of RAB nominees for appointment.
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## ***202.4 Composition of a RAB***

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- Chairmanship.
    - Each RAB established shall have two co-chairs, one representing the DoD installation and the other the community. Co-chairs shall be responsible for directing and managing the RAB operations.
  - Compensation for community members of the RAB.
    - The community co-chair and community RAB members serve voluntarily. DoD will not compensate them for their participation.
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## **202.5 Creating a mission statement**

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- The installation and community cochair, in conjunction with the RAB members, shall determine the RAB mission statement in accordance with guidance provided by the DoD Components.

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## **202.6 Selecting co-chairs**

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- DoD installation co-chair.
  - The DoD installation co-chair shall be selected by the Installation Commander or equivalent, or in accordance with Military Component-specific guidance.
- Community co-chair.
  - The community co-chair shall be selected by the community RAB members.

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## 202.7 Developing operating procedures

- Each RAB shall develop a set of operating procedures and the co-chairs are responsible for carrying them out. Areas that should be addressed include:
  - Clear goals and objectives, determined by co-chairs in consultation with RAB,
  - Meeting announcements,
  - Attendance requirements of members at meetings,
  - Development, approval and distribution of meeting minutes,
  - Meeting frequency and location,
  - Rules of order,
  - The frequency and procedures for conducting training,
  - Procedures for selecting or replacing co-chairs and selecting, replacing, or adding RAB members,
  - Size of the RAB, periods of membership, and co-chair length of service,
  - Review of public comments and responses,
  - Participation of the general public,
  - Keeping the public informed about proceedings of the RAB,
  - Discussing the next meeting agenda and issues to be addressed, and
  - Methods for resolving disputes.

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## 202.8 Training RAB members

- Training is not required for RAB members.
  - It may be advisable, however, to provide RAB members with some initial orientation training regarding the purpose and responsibilities of the RAB, familiarization on cleanup technologies, chemicals of concern, and sampling protocols, as well as informing them of the availability of independent technical advice and document review through EPA's Technical Assistant Grant program and DoD's Technical Assistance for Public Participation (TAPP) program, to enable them to fulfill their responsibilities. Training should be site-specific and beneficial to RAB members. The DoD installation may also provide in-house assistance to discuss technical issues. Funding for training activities must be within the scope of administrative support for RABs, as permitted in § 202.12.

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## **202.9 Conducting RAB meetings**

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- Public participation. RAB meetings will be open to the public.
    - The installation co-chair shall prepare and publish a timely public notice in a local newspaper of general circulation announcing each RAB meeting.
    - RAB meetings shall be held at reasonable times and in a manner or place reasonably accessible to and usable by all participants, including persons with disabilities.
    - Presentation materials and readable maps should be provided to all meeting participants as appropriate.
    - Interested persons shall be permitted to attend, appear before, or file statements with any RAB, subject to such reasonable rules or regulations as may be prescribed. Open solicitation of public comments shall be permitted and members of the public will have a designated time on the agenda to speak to the RAB committee as a whole.
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## **202.9 Conducting RAB meetings**

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- Nature of discussions.
    - The installation shall give careful consideration to all comments provided by individual RAB members. Group consensus is not a prerequisite for RAB input. Each member of the RAB may provide advice as an individual; however, when a RAB decides to vote or poll for consensus, only community members should participate.
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## **202.9 Conducting RAB meetings**

- Meeting minutes. The installation co-chair, in coordination with the community co-chair, shall prepare the minutes of each RAB meeting.
  - The RAB meeting minutes shall contain a record of the persons present; a complete and accurate description of matters discussed and comments received; and copies of all reports received, issued, or approved by the RAB. The accuracy of all minutes shall be certified by the RAB co-chairs. RAB minutes should be kept in the information repository; however, if the RAB minutes reflect decision-making, copies should also be documented in the Administrative Record.

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## **202.9 Conducting RAB meetings**

- The records, reports, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each RAB shall be available for public inspection and copying at a publicly accessible location, such as the information repositories established under the installation's Community Relations Plan, a public library, or in the offices of the installation to which the RAB reports, until the RAB ceases to exist.

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## **202.10 RAB adjournment and dissolution**

- RAB adjournment. An Installation Commander may adjourn a RAB with input from the community when there is no longer a need for a RAB or when community interest in the RAB no longer exists. An Installation Commander may consider adjourning the RAB in the following situations:
  - A record of decision has been signed for all DERP sites on the installation,
  - An installation has achieved response complete at all sites and no further environmental restoration decisions are required,
  - An installation has all remedies in place,
  - The RAB has achieved the desired end goal as defined in the RAB operating procedures,
  - There is no longer sufficient, sustained community interest, as documented by the installation with RAB community members and community-at-large input, to sustain the RAB, or
  - The installation has been transferred out of DoD control and day-to-day responsibility for making restoration response decisions has been assumed by the transferee.

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## **202.10 RAB adjournment and dissolution**

- Adjournment procedures. If the Installation Commander is considering adjourning the RAB, the Installation Commander shall:
  - Consult with EPA, state, tribes, RAB members, and the local community, as appropriate, regarding adjourning the RAB and consider all responses before making a final decision.
  - Document the rationale for adjournment in a memorandum in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation, and describe other ongoing public involvement opportunities that are available if the Installation Commander decides to adjourn the RAB.

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## **202.10 RAB adjournment and dissolution**

- Requirements for RAB dissolution.
  - An Installation Commander may recommend dissolution of a RAB when a RAB is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects as described in § 202.1(b).

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## **202.10 RAB adjournment and dissolution**

- Dissolution procedures. If the Installation Commander is considering dissolving the RAB, the Installation Commander shall:
  - Consult with EPA, state, tribal and local government representatives, as appropriate, regarding dissolving the RAB.
  - Notify the RAB community cochair and members in writing of the intent to dissolve the RAB and the reasons for doing so and provide the RAB members 30 days to respond in writing. The Installation Commander shall consider RAB member responses, and in consultation with EPA, state, tribal and local government representatives, as appropriate, determine the appropriate actions.

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## **202.10 RAB adjournment and dissolution**

- Notify the public of the proposal to dissolve the RAB and provide a 30- day public comment period on the proposal, if the Installation Commander decides to proceed with dissolution. At the conclusion of the public comment period, the Installation Commander will review the public comments, consult with EPA, state, tribal and local government representatives, as appropriate, and, if the Installation Commander still believes dissolution is appropriate, render a recommendation to that effect.

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## **202.10 RAB adjournment and dissolution**

- Send the recommendation, responsiveness summary, and all supporting documentation via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Military Component's Environmental Deputy Assistant Secretary (or equivalent) shall notify the Office of the Deputy Under Secretary of Defense (Installations & Environment) (or equivalent) of the decision to approve or disapprove the request to dissolve the RAB and the rationale for that decision.

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## **202.10 RAB adjournment and dissolution**

- Document the recommendation, responsiveness summary, and the rationale for dissolution in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation and describe other ongoing public involvement opportunities that are available, once the Military Component's Environmental Deputy Assistant Secretary (or equivalent) makes a final decision.

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## **202.10 RAB adjournment and dissolution**

- Reestablishing an adjourned or dissolved RAB.
  - An Installation Commander may reestablish an adjourned or dissolved RAB if there is sufficient and sustained community interest in doing so, and there are environmental restoration activities still ongoing at the installation or that may start up again. Where a RAB is adjourned or dissolved and environmental restoration activities continue, the Installation Commander should reassess community interest at least every 24 months. When all environmental restoration decisions have been made and required remedies are in place and are properly operating at an installation, reassessment of the community interest for reestablishing the RAB is not necessary. When additional environmental restoration decisions have to be made resulting from subsequent actions, such as long term management and five-year reviews, the installation will reassess community interest for reestablishing the RAB...

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## **202.10 RAB adjournment and dissolution**

- ...Where the reassessment finds sufficient and sustained community interest at previously adjourned or dissolved RABs, the Installation Commander should reestablish a RAB. Where the reassessment does not find sufficient and sustained community interest in reestablishing the RAB, the Installation Commander shall document in a memorandum for the record the procedures followed in the reassessment and the findings of the reassessment. This document shall be included in the Administrative Record for the installation. If there is interest in reestablishment at a previously dissolved RAB, but the Installation Commander determines that the same conditions exist that required the original dissolution, he or she will request, through the chain-of-command to the Military Component's Deputy Assistant Secretary, an exception to reestablishing the RAB. If those conditions no longer exist at a previously dissolved RAB, and there is sufficient and sustained interest in reestablishment, the Installation Commander should recommend to the Deputy Assistant Secretary that the RAB be reestablished. The Deputy Assistant Secretary will take the Installation Commander's recommendation under advisement and may approve that RAB for reestablishment.

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## **202.10 RAB adjournment and dissolution**

- Public comment.
  - If the Installation Commander intends to recommend dissolution of a RAB or reestablish a dissolved RAB, the Installation Commander shall notify the public of the proposal to dissolve or reestablish the RAB and provide a 30-day public comment period on the proposal. At the conclusion of the public comment period, the Installation Commander shall review public comments; consult with EPA and state, tribal, or local government representatives, as appropriate; prepare a responsiveness summary; and render a recommendation. The recommendation, responsiveness summary, and all supporting documentation should be sent via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Installation Commander shall notify the public of the decision.

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## **202.11 Documenting RAB activities**

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- The installation shall document information on the activities of a RAB in the Information Repository. These activities shall include, but are not limited to:
  - Installation's efforts to survey community interest in forming a RAB,
  - Steps taken to establish a RAB where there is sufficient and sustained community interest,
  - How the RAB related to the overall community involvement program, and
  - Steps taken to adjourn, dissolve, or reestablish the RAB.
- When RAB input has been used in decision-making, it should be documented as part of the Administrative Record.

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## **202.12 Administrative support and eligible expenses**

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- Administrative support.
  - Subject to the availability of funding, the installation shall provide administrative support to establish and operate a RAB.
- Eligible administrative expenses for a RAB. The following activities specifically and directly associated with establishing and operating a RAB shall qualify as an administrative expense of a RAB:
  - RAB establishment.
  - Membership selection.
  - Training if it is:
    - Site specific and benefits the establishment and operation of a RAB.
    - Relevant to the environmental restoration activities occurring at the installation.
  - Meeting announcements.
  - Meeting facilities.
  - Meeting facilitators, including translators.
  - Preparation of meeting agenda materials and minutes.
  - RAB-member mailing list maintenance and RAB materials distribution.

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### ***202.13 Technical assistance for public participation***

- Community members of a RAB or TRC may request technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and environmental restoration activities conducted, or proposed to be conducted, at the installation in accordance with 10 U.S.C. 2705(e) and the TAPP regulations located in 32 CFR Part 203.

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### ***202.14 Documenting and reporting activities and expenses***

- The installation at which a RAB is established shall document the activities and meeting minutes and record the administrative expenses associated with the RAB in the information repository at a publicly accessible location. Installations shall use internal department and Military Component-specific reporting mechanisms to submit required information on RAB activities and expenditures.

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## ***The Kelly RAB***

- Began as a Technical Review Committee (TRC) while Kelly was still an active Air Force installation
- Converted to a RAB in 1994
- Chartered signed August 1998
  - Appendix A – DoD RAB Implementation Guidelines, 1994
  - Appendix B – DoD Proposed Rules for RABs, 1996
- Amended November 2002
  - Appendix A – Map

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## ***The Kelly RAB Charter (operating procedures)***

- Forward
- Part One: Mission Statement
- Part Two: Statement of Purpose
- Part Three: RAB Operating Rules
- Certification of RAB Approval
- Addendum
  - Composition
  - Applications
  - Appointment of community positions
  - Appointment of other government board positions
  - Attendance of community members
  - Attendance of other government members
  - Resignation
  - Alternate Members
  - Terms
  - Election of Co-chair
  - Removal or Resignation of Community Co-chair

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## Forward

- Part A: Restatement.
  - This revised, amended and restated Restoration Advisory Board Charter, herein referred to as "the Charter," shall serve as the organizational and operational charter of the Kelly Air Force Base Restoration Advisory Board, herein sometimes referred to as "RAB" or "Board."
- Part B: Basis and Authority for Charter.
  - The basis and authority for this Charter are contained in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendment and Reauthorization Act (SARA) of 1986, particularly Sections 120(a), 120(f), and 121(f), and 10 USC 2705, enacted by Section 211 of SARA, and Executive Orders numbers 12856, 12250, 12875, and 12898. To the extent feasible, the activities of the RAB are to be conducted in accordance with the guidance stated in the RAB Implementation Guidelines issued by the U.S. Department of Defense September 27, 1994 (Appendix A); and with the Proposed Rules for Restoration Advisory Boards proposed by the Department of Defense and published in the Federal Register on August 6, 1996 (Appendix B).

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## Part One: Mission Statement

- The mission of the Kelly Air Force Base Restoration Advisory Board shall be:
  - To represent stakeholders and provide community outreach involvement, timely review, advice, and comments on DOD environmental cleanup actions and proposed actions with respect to releases of hazardous substances at Kelly Air Force Base and to act as a watchdog for the community;
  - To conduct a proactive program for providing information about environmental contamination and its effects and restoration decisions to stakeholders and to ensure that all segments of the public have an opportunity to be heard; and
  - To ensure that all restoration stakeholders, regardless of race, color, national origin, or income, have an opportunity for public participation in the making of restoration decisions.

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## **Part Two: Statement of Purpose**

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- The Kelly Air Force Base RAB shall have the following purposes:
  - To provide an expanded opportunity for input by stakeholders into the environmental restoration process (stakeholders being persons who are actually or potentially affected by Kelly Air Force Base restoration activities);
  - To ensure public input into the planning and implementation of environmental restoration activities at Kelly Air Force Base;
  - To promote community awareness and obtain constructive community review and comment on environmental restoration actions to accelerate the overall cleanup and potential community reuse of portions of Kelly Air Force Base; and
  - To provide a forum for consultation, advice, and information sharing among Kelly Air Force Base and Board Members on the following activities and issues:
    - Identifying environmental restoration activities and projects at Kelly Air Force Base;
    - Monitoring progress on these activities and projects;
    - Collecting information regarding restoration priorities at Kelly Air Force Base;
    - Addressing land use, level of restoration, acceptable risk, waste management and technology development issues related to environmental restoration at Kelly Air Force Base; and
    - Developing environmental restoration strategies for Kelly Air Force Base.

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## **Part Three: RAB Operating Rules, Qualifications**

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- The membership of the RAB will be well balanced and will include members of the San Antonio community who reflect the diverse interests of stakeholders. RAB community members should live and/or work in the area affected by the Kelly Air Force Base environmental restoration program. The RAB will also include representatives of the United States Department of Defense; the United States Environmental Protection Agency; the Texas Natural Resources Conservation Commission; other state agencies; and local governmental agencies. The total number of Board members shall not be greater than twenty-five (25).
- Addendum: The total number of Board members shall not be greater than twenty-five (25). The RAB will include representatives of the United States Department of Defense; the United States Environmental Protection Agency; the Texas Commission on Environmental Quality, and the local reuse authority. The RAB will also include five representatives from state and local governmental agencies. The remaining sixteen representatives will be elected from the community. A minimum of eight of the sixteen community positions shall currently reside, own property, or be employed within the neighborhoods surrounding the plume, as described in "Appointment of community positions" below.

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## **Part Three: RAB Operating Rules, Applications**

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- Designated representatives of community groups and special interest groups, as well as individual citizens, may apply for membership to the Board as a community member. To be considered for selection as a Board community member, a person must submit an application on a form approved by the Board at least fourteen (14) days prior to the date of the Board meeting at which membership will be considered for approval. The applicant must be present at the Board meeting at which the applicant's membership is considered. Applicants for Board membership must be approved by a majority of Board members.
- Addendum: Designated representatives of community and other interest groups, as well as individual citizens, may apply for membership to the Board as a community member. To be considered for selection as a Board community member, a person must submit an application on a form approved by the Board no later than fourteen (14) days prior to the date of the Board meeting at which membership will be considered for approval. The applicant should either be present or be represented by an alternate at the meeting at which his or her membership is considered. If an applicant is unable to attend the election meeting, he or she may be considered if he or she informs one of the co-chairs that he or she cannot attend. RAB members whose terms are ending must notify the RAB of their intention to seek reappointment prior to the roll-call for voting on appointments. RAB members are not required to complete a new application unless any information on their previously filed application has changed or needs to be altered.

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## **Addendum: Appointment of community positions**

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- Appointment of community positions (64% of available RAB positions)
  - New community applicants as well as outgoing community members who have stated their intention to seek reappointment will be considered for membership on the Board. A minimum of eight of the sixteen community positions shall currently reside, own property, or be employed within the neighborhoods surrounding the plume, as indicated in Appendix A to this addendum. The RAB shall achieve this proportionate representation before the conclusion of calendar year 2004. A minimum of six "affected community" positions shall be filled upon completion of the 2003 appointment process.
  - Applicants for community board membership must be appointed by a majority of those community Board members in attendance whose terms are still active. Normally scheduled appointment meetings shall be held in the fall of each calendar year. Repeated balloting may be necessary to obtain the required proportion of community RAB member representation identified above.
  - The RAB will first appoint members from the "affected community" to comply with the proportionate representation indicated above. Only those applicants who currently reside, own property, or are employed in the area surrounding the plume, as indicated in Appendix A, shall be considered at this time.
  - After the required proportion of community RAB member representation is achieved, balloting shall proceed to fill the remaining community member vacancies on the RAB. During this portion of the appointment/reappointment process, all applicants shall be considered. An exception is made for appointments related to resignations by community members as identified in "Resignation" below.

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### ***Addendum: Appointment of other government board positions***

- Appointment of other government board positions (36% of available RAB positions)
  - As noted in "Composition" above, the RAB will include representatives of the United States Department of Defense; the United States Environmental Protection Agency; the Texas Commission on Environmental Quality; and the local reuse authority. The remaining five government board positions will be filled by government agencies selected by the Air Force co-chair with input of the RAB.

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### ***Part Three: RAB Operating Rules, No Compensation***

- Members shall serve without compensation. All expenses incident to travel and review shall be borne by the respective members or their organizations. Subject to the availability of funds and approval by Kelly Air Force Base, the Air Force will fund per diem and travel expenses for Board Members attending training courses or seminars on environmentally-related matters relevant to Member's duties on the Board.

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### **Part Three: RAB Operating Rules, Attendance**

- Members are expected to attend all Board meetings or to request their respective alternates to attend in their absence. If a member fails to attend or send an alternate to two or more consecutive regularly scheduled or specially called meetings of the entire RAB, the Board co-chairs may, with the approval of two-third majority of the Board, ask the member to resign. The Board membership of any member who fails to attend or send an alternate to four consecutive meetings shall be deemed vacated without further action by the Board.
- Addendum
  - Attendance of community members. Members are expected to attend all Board meetings or to request their respective alternates to attend in their absence. The Board membership of any community member who fails to attend or send an alternate to three consecutive meetings may be revoked by a majority of the community RAB members.
  - Attendance of other government members. The RAB will request that a government agency appoint a new representative if a government member fails to attend or send an alternate to three consecutive meetings.

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### **Part Three: RAB Operating Rules, Resignation**

- Any member who determines he or she is unable to continue to participate fully may submit a resignation in writing or orally to either of the Board co-chairs. A resigning member may nominate a new member to replace the resigning member for the remainder of that member's term. Such replacement shall be subject to approval by the Board.
- Addendum:
  - Resignation. Any member who determines he or she is unable to continue to participate fully may submit a resignation in writing or orally to either of the Board co-chairs. A resigning member will be replaced by his or her designated alternate. If the member has no alternate, candidates from the application pool will be considered via the community selection process outlined in "Applications" and "Appointment of Community Positions" above. A new community member appointed to fill a resigned position shall complete the original term of the position.

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### **Part Three: RAB Operating Rules, Public Input**

- Members should be willing to promote public input into the planning and implementation of environmental restoration activities at Kelly Air Force Base and to communicate with the local community members and interest groups concerning base cleanup issues. Members will serve as a direct and reliable conduit for information flow to and from the community. To improve communication between the public and the Board, members' names, addresses, and telephone numbers will be listed in meeting minutes and made available to members of the public upon request, unless a member request that such information not be disclosed because of privacy considerations.

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### **Addendum: Alternate Members**

- Alternate Members.
  - Within 60 days of appointment/reappointment, RAB members who currently reside, own property, or are employed within the neighborhoods surrounding the plume shall designate an alternate who currently resides, owns property, or is employed within the neighborhoods surrounding the plume, as indicated in Appendix A to this addendum. Within 60 days of appointment/reappointment, RAB members who do not currently reside, own property, or who are not employed within the neighborhoods surrounding the plume shall designate an alternate.

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### **Part Three: RAB Operating Rules, Terms**

- The term of office for Board members is two years, commencing on January 1; provided, however, that members serving on the Board on the date this Charter is effective shall draw lots to determine whether their current terms expire December 31, 1999 or December 31, 2000, and the terms of such members, regardless of actual length, shall be considered two-year terms for the purpose of this paragraph. After serving all or part of a two-year term, a member may continue to serve one or more additional two-year terms, if nominated and appointed, until the Board is terminated. To be eligible for such additional terms, the member must continue to meet the qualifications stated in this Part Three of this Charter. Membership applications from interested persons will be accepted at any time; however, priority consideration will be given those applicants who clearly enhance the diverse nature of the membership.
- Addendum: The term of office for a community Board position is two years, commencing upon appointment and ending on December 31 of the following year. After serving all or part of a two-year term, a member may continue to serve additional two-year terms by complying with the provisions of "Applications" and "Appointment of Community Positions" above.

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### **Part Three: RAB Operating Rules, Board Members' Guiding Principles**

- In order to accomplish the mission and purpose of the RAB, and in order to conduct productive meetings, Board members will adhere to the following guiding principles:
  - Remain open at all times to other points of view, consider reasonable alternatives, and focus on recommending the best way of accomplishing cleanup goals;
  - Be honest and keep commitments on assignments or providing information;
  - Communicate in an open, civil, organized, focused, and effective manner at all times;
  - Ensure that domination of discussion or hidden agendas are ruled out of order;
  - Require disclosure of actual or potential conflicts of interest prior to discussion of an item, and require that a member with such a conflict of interest refrain from voting;
  - Ensure that all members have reasonable access to all environmental information related to restoration activities; and
  - Eliminate unnecessary, ineffective, or redundant processes whenever possible.

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### ***Part Three: RAB Operating Rules, Board Members' Responsibilities***

- RAB members will, to the extent possible, undertake the following responsibilities:
  - Serve on at least one sub-committee and disseminate information about that subcommittee's work to other RAB members;
  - Develop appropriate information when presenting a report or representing a group or constituency;
  - Represent the interests of the RAB in communicating with local community members and interest groups; and
  - Work together to make recommendations to the Air Force in furtherance of the goal of accelerating cleanup activities.

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### ***Part Three: RAB Operating Rules, Board Officers and Meetings***

- Co-chairs Preside. The Restoration Advisory Board shall be co-chaired by a person assigned to or employed by San Antonio Air Logistics Center, Kelly Air Force Base, and selected by the Commander as Installation Co-chair, and a community member as Community Co-chair. The responsibility for presiding over the meetings will be shared by the Co-chairs. The Co-chairs or their alternates should attend all meetings.
- Open Meetings. The Co-chairs will preside over meetings in a fair and impartial manner that ensures each Board member the opportunity to participate in the restoration advisory process and interested members of the public are afforded the opportunity to communicate their views on Board business. Although the RAB is not a state or local governing body or commission subject to the Texas Open Meetings Act, RAB meetings will, to the extent reasonable and practicable, be open to the public and otherwise held in accordance with the policy and provisions of the Act.

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### **Part Three: RAB Operating Rules, Board Officers and Meetings**

- Election of Co-chair. The community Co-chair will be selected by a majority vote of the Board community members. The Board Community Co-chair will serve a 12-month term, commencing with the second Board meeting in each calendar year. A Co-chair may serve two or more terms, including consecutive terms, if approved by the Board community members.
- Addendum: Election of Co-chair. The RAB Community Co-chair will be selected by a majority vote of the Board community members. The Board Community Co-chair will serve a 12-month term, commencing with the second Board meeting in each calendar year. A Co-chair may serve two or more terms, including consecutive terms, if approved by the Board community members.

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### **Part Three: RAB Operating Rules, Board Officers and Meetings**

- Removal of Co-chair. The community Board members may by a two-thirds majority vote remove a Community Co-chair prior to the expiration of the term of office of such Co-chair if that person is determined to be ineffective or detrimental to the progress of the Board. The vote to remove a Community Co-chair shall be taken at the meeting following the one at which the removal is proposed.
- Addendum: Removal or Resignation of Community Co-chair. The community Board members in attendance may, by a two-thirds majority vote, remove a Community Co-chair prior to the expiration of the term of office of such Co-chair if that person is determined to be ineffective or detrimental to the progress of the Board. The vote to remove a Community Co-chair shall be taken at the meeting following the one at which the removal is proposed. The community Board members may remove the Community Co-chair or the Community Co-chair may choose to resign his or her chair without affecting his or her RAB membership. In this circumstance, a new Community Co-chair will be elected from the remaining community members by a majority vote of the Board community members in attendance.

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### **Part Three: RAB Operating Rules, Board Officers and Meetings**

- Meeting Schedule. Regular meetings of the Board shall be held at least quarterly at times approved by the Co-chairs, with the advice of the Board members. The meetings will be held at an off-base location, unless arrangements cannot be reasonably made. Special meetings may be held at any time if deemed necessary by the Co-chairs, provided that all members shall be given notice of any special meeting not later than fourteen (14) days prior to the date of such meeting. The presence of nine (9) members, in addition to the Installation co-chair, shall constitute a quorum at any regular or special meeting of the Board, provided that at least six (6) of the members present are community members as described in the Section 3.1.1.
- Agendas. Meeting agendas will be set by the Co-chairs. Board members who wish to suggest items for the agenda shall submit such items to one of the Co-chairs not later than fourteen (14) days prior to the meeting. Base personnel shall be responsible for providing written notification to all Board members of the upcoming agenda, date, time, and place of the scheduled Board meetings.

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### **Part Three: RAB Operating Rules, Board Officers and Meetings**

- Contents of Minutes. Base personnel shall be responsible for recording and disseminating minutes of Board meetings. Spanish translations of the minutes shall be made available upon request. A list of Board members who attend each meeting will be incorporated into meeting minutes. The minutes shall include any action items that may be assigned during a meeting. The responsible person will brief the Board on the progress on each action item until the action is closed.
- Distribution of Minutes. A copy of the Board meeting minutes will be sent to each Board member within twenty-one (21) calendar days of the meeting. Copies of meeting minutes and transcripts will be available for public review in the information repositories established at the science and technology section of the San Antonio Central Library and at the Kelly Air Force Base Library.

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### **Part Three: RAB Operating Rules, Board Officers and Meetings**

- **Board Members' Comments.** In order to ensure public input into the planning and implementation of environmental restoration activities, Board members are expected to review and provide comment on various environmental restoration documents. Board members will submit written comment to the Community Co-chair on the subject documents within the time frame specified, which shall be not less than ten (10) days or nor more than forty-five (45) days. The Community Co-chair will consolidate comments from the members and provide them to the Board for consideration at committee or Board meetings.
- **Rules of Order.** RAB meetings will be conducted according to Roberts Rules of Order. The Co-chairs will provide each member with his or her own copy of the rules. The Co-chairs shall appoint a parliamentarian.

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### **Part Three: RAB Operating Rules, Board Officers and Meetings**

- **Administrative Support.** The Installation Co-chair will ensure that adequate administrative support is made available to establish and operate the RAB. The RAB may seek funding from additional sources to supplement the support provided by the Air Force.
- **Sub-committees.** The Co-chairs will jointly appoint sub-committees of the Board for Technical Review, Administrative, and other matters at their discretion or at the request of the Board.

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### **Part Three: RAB Operating Rules, Board Officers and Meetings**

- **Administrative Record.** Final documents, members' comments reviewed by the Board, responses to action items, and Board meeting minutes will be made part of the Administrative Record of the RAB.
- **Information Repositories.** Kelly Air Force Base has established two information repositories for all public documents relating to restoration activities. These repositories are located at the science and technology section of the Main San Antonio Library and at the Kelly Air Force Base Library. Board members are authorized access to all documents, studies, or items of information that have been placed in the public repositories or distributed at Board meetings.
- **Document Copies.** In addition to information placed in the public repositories, the Installation will provide to the Board Community Co-chair at least one copy of each draft final preliminary assessment/site investigation, remedial investigation, focused feasibility study and feasibility study document for review and/or dissemination at the same time the document is provided to state and federal regulators. One copy of each other draft final restoration document will be provided to the Community Co-chair at the same time such document is provided to the regulators. Additional copies of documents may be requested and will be provided if sufficient interest is demonstrated. The Co-chair shall make the document copies provided accessible to the Board community members.

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### **Part Three: RAB Operating Rules, Board Officers and Meetings**

- **Reportable Releases.** In keeping with the intent of the Emergency Planning and Community Right-To-Know Act and other applicable federal environmental acts, the Board will appoint a committee to be notified via telephone by Kelly Air Force Base personnel of any reportable releases or significant environmental incidents involving hazardous substances. Such notification will occur as soon as practicable after regulatory agencies have been notified. In addition, a listing of any reportable releases or incidents as described above and a summary of remedial actions taken or planned will be made available to Board members at or before the Board meeting next following the release or incident.

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### **Part Three: RAB Operating Rules, Effective Date and Amendments**

- Effective Date.
  - The effective date of this Charter shall be the date of approval by a two-thirds majority of a duly constituted quorum of the Board meeting in a regularly called meeting. Such approval shall be indicated by the execution below by the two Co-chairs.
- Amendments.
  - This Charter may be further amended by a two-thirds majority vote of the members present at a meeting following a meeting in which the amendment was proposed. Such proposed amendment shall be in writing and distributed to all Board members prior to the proposal meeting at which it is discussed and considered for approval. Amendments must be consistent with applicable laws, regulations, guidelines, Air Force agreements with state and federal regulatory agencies, and the statutes listed in the Foreword of this Charter (Basis and Authority for Charter).

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### **Part Three: RAB Operating Rules, Expiration**

- Expiration upon Completion.
  - This Charter will expire without further action by the RAB or any other party upon completion of the RAB's function with respect to the restoration of Kelly AFB.

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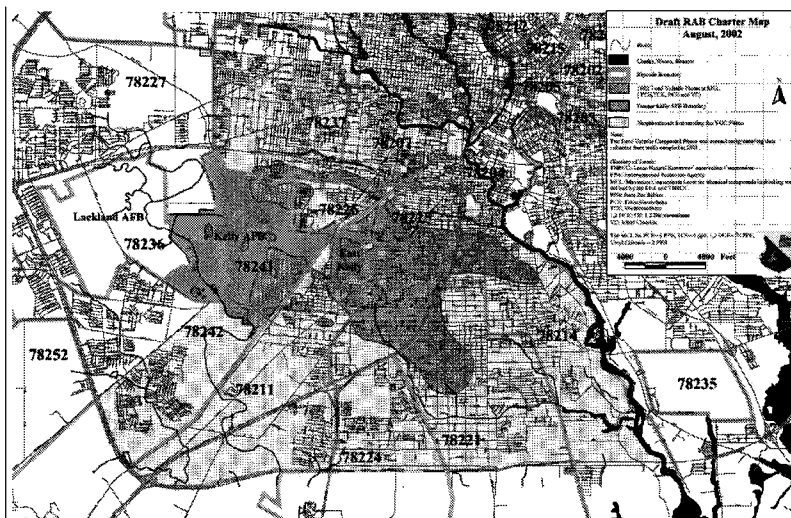
# Certification of RAB Approval

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- The duly appointed Kelly Air Force Base Restoration Advisory Board Co-chairs certify that the foregoing RAB Charter, having as attachments thereto Appendices A and B identified below, was approved unanimously by the Board members present and voting at a duly called regular meeting of the Board, at which a quorum was present, held open to the public on July 29, 1998, at Winston Elementary School, San Antonio, Texas.
- Signed by
  - Robert M. Murdock, Brigadier General US Air Force
  - M. Damian Sandoval, Community Co-chair



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## ***Conflicts Between Final Rule and Kelly Charter***

- Name
  - Change: Kelly Air Force Base Restoration Advisory Board Charter
  - To: Former Kelly Air Force Base Restoration Advisory Board Operating Procedures
- Reference
  - Change: To the extent feasible, the activities of the RAB are to be conducted in accordance with the guidance stated in the RAB Implementation Guidelines issued by the U.S. Department of Defense September 27, 1994 (Appendix A); and with the Proposed Rules for Restoration Advisory Boards proposed by the Department of Defense and published in the Federal Register on August 6, 1996 (Appendix B).
  - To: The activities of the RAB are to be conducted in accordance with 32 CFR Part 202, Department of Defense Restoration Advisory Boards Final Rule

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## ***Conflicts Between Final Rule and Kelly Charter***

- Applications
  - Change: Addendum: Designated representatives of community and other interest groups, as well as individual citizens, may apply for membership to the Board as a community member. To be considered for selection as a Board community member, a person must submit an application on a form approved by the Board no later than fourteen (14) days prior to the date of the Board meeting at which membership will be considered for approval. The applicant should either be present or be represented by an alternate at the meeting at which his or her membership is considered. If an applicant is unable to attend the election meeting, he or she may be considered if he or she informs one of the co-chairs that he or she cannot attend. RAB members whose terms are ending must notify the RAB of their intention to seek reappointment prior to the roll-call for voting on appointments. RAB members are not required to complete a new application unless any information on their previously filed application has changed or needs to be altered.
  - To: To support the objective selection of community RAB members, AFRPA will use a selection panel comprised of community members to nominate community RAB members.

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## **Conflicts Between Final Rule and Kelly Charter**

**U.S. AIR FORCE**

- Eligibility
  - Change: Appointment of community positions (64% of available RAB positions)
  - To: In order to be eligible for appointment to the Kelly RAB, individuals must:
    - Be identified by the community; and
    - Appointed by the Installation Commander; and
    - Live and/or work in the affected community; or
    - Be affected by the environmental restoration activities at an installation, including:
      - Family members of military personnel and civilian workers; or
      - Local and state governments and EPA for NPL properties; or
      - Tribal community members and indigenous people; or
      - Current landowners.

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## **Course of Action**

**U.S. AIR FORCE**

- Eligibility and Selection Panel
  - Verify Locally Affected RAB memberships of:
    - Rodrigo Garcia (Elected Jan. 18, 2005; term expires Dec. 31, 2006)
    - Henrietta LaGrange (Elected Jan. 18, 2005; term expires Dec. 31, 2006)
    - Nazarite Perez (Elected Oct. 18, 2005; term expires Dec. 31, 2007)
    - Michael Sheneman (Elected Oct. 18, 2005; term expires Dec. 31, 2007)
  - Verify eligibility of:
    - Esmeralda Galvan (Elected Oct. 18, 2005; term expires Dec. 31, 2007)
    - Daniel Gonzales (Elected Jan. 18, 2005; term expires Dec. 31, 2006)
    - Ruben Martinez (Elected Jan. 18, 2005; term expires Dec. 31, 2006)
    - Armando Quintanilla (Elected Jan. 18, 2005; term expires Dec. 31, 2006)
    - Robert Silvas (Elected Jan. 18, 2005; term expires Dec. 31, 2006)
  - Convene selection panel
    - Nominate list of RAB members for AF appointment by Oct. 20
    - Notify RAB members by Oct. 23
    - Hold RAB orientation session Jan. 6

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**21 CFR Chapter I**

**PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS**

■ 1. The authority citation for 21 CFR part 1271 continues to read as follows:

**Authority:** 42 U.S.C. 216, 243, 263a, 264, 271.

■ 2. Section 1271.3 is amended by adding paragraph (d)(8) to read as follows:

**§ 1271.3 How does FDA define important terms in this part?**

\* \* \* \* \*

(d) \* \* \*

(8) Blood vessels recovered with an organ, as defined in 42 CFR 121.2, that are intended for use in organ transplantation and labeled "For use in organ transplantation only."

\* \* \* \* \*

**42 CFR Chapter I**

**PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK**

■ 3. The authority citation for 42 CFR part 121 continues to read as follows:

**Authority:** Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); and sections 1102, 1106, 1138, and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395hh).

■ 4. Section 121.2 is amended by adding a sentence at the end of the definition of "Organ" to read as follows:

**§ 121.2 Definitions.**

\* \* \* \* \*

*Organ* \* \* \* Blood vessels recovered from an organ donor during the recovery of such organ(s) are considered part of an organ with which they are procured for purposes of this part if the vessels are intended for use in organ transplantation and labeled "For use in organ transplantation only."

\* \* \* \* \*

■ 5. Section 121.7 is amended by redesignating paragraph (e) as paragraph (f) and by adding paragraph (e) to read as follows:

**§ 121.7 Identification of organ recipient.**

\* \* \* \* \*

(e) *Blood vessels considered part of an organ.* A blood vessel that is considered part of an organ under this part shall be subject to the allocation requirements and policies pertaining to the organ with which the blood vessel is procured until and unless the transplant center receiving the organ determines that the blood vessel is not needed for the transplantation of that organ.

Dated: April 10, 2006.  
Elizabeth M. Duke,  
*Administrator, Health Resources and Services Administration.*

Dated: February 8, 2006.  
Jeffrey Shuren,  
*Assistant Commissioner for Policy, Food and Drug Administration.*  
[FR Doc. 06–4369 Filed 5–11–06; 8:45 am]  
BILLING CODE 4160–01–S

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 202**

[DoD–2006–OS–0077; 0790–AG31]

**Department of Defense Restoration Advisory Boards**

**AGENCY:** Department of Defense.  
**ACTION:** Final rule.

**SUMMARY:** The Department of Defense (DoD) is promulgating the Restoration Advisory Board (RAB) rule regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. This rule implements the requirement established in 10 U.S.C. 2705(d)(2)(A), which requires the Secretary of Defense to prescribe regulation regarding RABs. This rule is based on DoD's current policies for establishing and operating RABs, as well as the Department's experience over the past ten years.  
**DATES:** This rule is effective May 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** For specific questions or to request an opportunity to review the docket for this rulemaking, please contact Ms. Patricia Ferree, Office of the Deputy Under Secretary of Defense (Installations & Environment), 703–571–9060. This final rule, along with relevant background information, is available on the World-Wide Web at the Defense Environmental Network and Information eXchange Web site at <https://www.denix.osd.mil/rabrul>.

**SUPPLEMENTARY INFORMATION:**

**Preamble Outline**

- I. Authority
- II. Background
- III. Summary of Significant Changes to the Final Rule
- IV. Response to Comments
- V. Administrative Requirements
  - A. Regulatory Impact Analysis Pursuant to Executive Order 12866
  - B. Regulatory Flexibility Act
  - C. Unfunded Mandates
  - D. Paperwork Reduction Act

- E. National Technology Transfer and Advancement Act
- F. Environmental Justice Requirements Under Executive Order 12898
- G. Federalism Considerations Under Executive Order 13132

**I. Authority**

This rule is being finalized under the authority of Section 2705 of Title 10, United States Code (U.S.C.).

**II. Background**

The Department of Defense (DoD) published the Restoration Advisory Board (RAB) rule in the **Federal Register** as a proposed rule on January 28, 2005 (70 FR 4061) in 32 U.S. Code of Federal Regulations (CFR) Part 202. The public comment period for the proposed rule ended March 29, 2005. Thirty-four 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 DoD'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. All comments the Department received are presented in a "Response to Comments" document, which has been placed in the docket for this rulemaking.

DoD recognizes the importance of public involvement at military installations. For the purposes of this rule, the term installation means operating and closing DoD installations and formerly used defense sites (FUDS) that reacquire environmental restoration. DoD has developed community involvement policies to ensure that local communities are provided the opportunity as early as possible to obtain information about, and provide input to, the decisions regarding environmental restoration activities at military installations. It is DoD policy to provide the public with the ability to participate in these activities through the establishment of RABs, among other public involvement opportunities.

Based on statutory and regulatory requirements for community



involvement and recommendations from the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC), DoD has strengthened its community involvement efforts, including the RAB initiative, under its environmental restoration program. DoD believes that working in partnership with local communities and addressing the concerns of those communities early in the restoration process has enhanced its efforts under, and increased the credibility of, the environmental restoration program. The Department remains committed to involving communities near DoD installations in environmental restoration decision-making processes that may affect human health, safety and the environment.

RABs have become a significant component of DoD's efforts to increase community involvement in the environmental restoration program. RABs provide a continuous forum through which members of affected communities can provide input to an installation's ongoing environmental restoration activities. RAB members provide recommendations regarding environmental restoration to DoD. RABs are not Federal Advisory Committees and are specifically excluded from the requirements of the Federal Advisory Committee Act (10 U.S.C. 2705(d)(2)), however, DoD does meet its substantive requirements.

On September 27, 1994, DoD and the Environmental Protection Agency (EPA) jointly issued guidelines for the formation and operation of RABs ("Restoration Advisory Board Implementation Guidelines"). The guidelines describe how to implement the DoD RAB policy and identify each stakeholder's role within the RAB. The guidelines also state that existing Technical Review Committees (TRCs) or similar groups may be expanded or modified to become RABs, and that RABs may fulfill the statutory requirements for establishing TRCs (10 U.S.C. 2705(d)(1)) at installations undergoing environmental restoration).

As of September 30, 2004, DoD reported the existence of 310 active RABs across all of the Military Component's installations. Over the past several years, the number of RABs has remained fairly consistent, although the number fluctuates as some RABs adjourn and others form. RABs are one part of DOD's and the Military Components' extensive community outreach and public participation activities, which include compliance with the public notice and participation requirements of the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act, and other Federal and state environmental laws, as well as considerable consultation with DoD partners at Federal, state, and local government agencies.

A RAB may only address issues associated with environmental restoration activities under the Defense Environmental Restoration Program (DERP) at DoD installations, including activities conducted under the Military Munitions Response program (MMRP) to address unexploded ordnance, discarded military munitions, and the chemical constituents of munitions. If a RAB already exists at an installation and MMRP sites are identified, the RAB may be expanded to consider additional issues related to the MMRP sites. If the current RAB or DoD installation decides that it is necessary to involve new stakeholders, the installations should notify potential stakeholders of its intent to expand the RAB and solicit new members who have an interest in issues related to the MMRP. If there is no current RAB active at the installation and MMRP sites are identified, the installation will follow the prescribed guidance for determining sufficient community interest in forming a RAB.

The Secretary of Defense is required to "prescribe regulations regarding the establishments, characteristics, composition, and funding of Restoration Advisory Boards" (10 U.S.C. 2705(d)(2)(A)). DoD's issuance of the RAB rule is not, however, a precondition to the establishment of RABs (10 U.S.C. 2705(d)(2)(B)). Therefore, DoD provides the RAB rule regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. DoD recognizes that each RAB established will be a unique organization dealing with installation-specific issues. This rule is consistent with the recommendations set forth in the FFERDC's Final Report and reflects over ten years of experience in establishing and operating RABs throughout the United States. DoD has structured this proposal to maximize flexibility for RAB members and installations nationwide.

### III. Summary of Significant Changes to the Final Rule

The Department of Defense has made no significant changes to the RAB final rule.

### IV. Response to Comments

The Department received many comments on the proposed rule. Many comments were supportive of the

proposed rule and the role of RABs in public participation. In particular, commenters believed that the rule provides standards that are comprehensive yet flexible enough to address the 310 active RABs operating at DoD installations across the nation. 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. 202.1 Purpose, Scope, Definitions, and Applicability

The Department received several comments requesting that the scope of RABs be modified to include additional community concerns outside of environmental restoration activities under the DERP. Although RABs have been identified as a successful forum for public discussion of community concerns, DoD funds RABs with money dedicated to supporting environmental restoration activities under the DERP. The Department cannot justify the discussion of issues outside the activities of the DERP with this same funding source. DoD continues to encourage installations to assist the RABs in finding the proper venue to support a broader scope of issues. One commenter requested that the text in the preamble regarding the scope of RABs be included in the rule to clarify that RABs may address only issues associated with environmental restoration activities under the DERP. The Department has modified the rule for clarification.

The Department received one comment requesting that the definition of "environmental restoration" be modified to include addressing detection and disposal of unexploded ordnance and demolition and removal of unsafe buildings and structures. These activities are currently included by definition as part of environmental restoration.

The Department received three additional comments regarding definitions. One commenter requested that the definition of "stakeholder" be revised to include current landowners of FUDS properties. The Department has incorporated this comment into the Rule. DoD also received two comments requesting that munitions and explosives of concern (MEC) be added to the definition of environmental restoration. MEC are included in the Department's environmental restoration program, specifically, they are addressed through the MMRP. The Department has incorporated language regarding the MMRP into the final rule.

The Department received many comments in support of the purpose and scope of this rule. Two commenters agreed with the Department regarding its encouragement of open public participation. One commenter agreed with DoD's approach that the rule applies to all RABs, regardless of when they were formed.

#### *B. 202.2. Criteria for Establishment*

The Department received several comments requesting that the number of petitioners required to establish a RAB be reduced from 50 to 25 or 30. The Department clarifies that 50 petitioners is not the only way to establish a RAB. The petition is one of four proposed mechanisms to initiate the establishment of the RAB. Specifically, as found in § 202.2(a) of the final rule, "a RAB should be established when there is sufficient and sustained community interest and any of the following criteria are met—the closure of an installation involves the transfer of property to the community; at least 50 local citizens petition for a RAB; Federal, state, tribal, or local government representatives request the formation of a RAB; or the installation determines the need for a RAB." If 25 citizens petition for a RAB in a rural or less populated area, it is reasonable to conclude that the installation would determine the need or that Federal, state, tribal, or local government representatives would request formation of a RAB.

Several commenters requested that the statement "sufficient and sustained community interest" be further clarified. For RABs to operate, it is necessary that there be a voluntary investment of public participation. This public willingness to be involved in a voluntary group and invest the time and energy is not found in all communities. The statement "sufficient and sustained community interest" indicates that there is enough willingness from the community to adequately maintain a RAB for a continued period of time. DoD recognizes that installations nationwide are unique and has avoided inflexible standards that do not meet the needs of this program. In Section 202.2 of this rule, rather than providing specific standards, the Department has outlined several tools for Installation Commanders to use in the evaluation of "sufficient and sustained community interest" including reviewing correspondence files and media coverage; consulting local community members and relevant government officials; and evaluating responses to communication efforts, such as notices placed in local newspapers, and, if

applicable, announcements on the installation's website. Once a RAB has been established, a decline in sufficient and sustained community interest should be evident when the public has withdrawn from a role of active involvement, such as a lack of attendance at scheduled meetings.

The Department received two comments requesting modified language regarding the conversion of existing TRCs or groups that provide advice to RABs. These commenters requested that, where TRCs or similar advisory groups already exist, the TRC or similar advisory group should be incorporated or converted into a RAB, provided there is sufficient and sustained interest within the community. The Department agrees with this statement and § 202.2(c) of the final rule reflects this position.

Several commenters requested that the Installation Commander reassess community interest annually rather than bi-annually. The Department would like to make clear that the reassessment of interest conducted by the Installation Commander is not the sole mechanism to prompt the establishment or reestablishment of a RAB. This assessment is part of a layering strategy to ensure that where a community has sufficient interest, a RAB will be established; therefore, the Department has decided against making this change. Additional mechanisms found in § 202.2(a) that prompt RABs to be established or reestablished include the closure of an installation that involves the transfer of property to the community; at least 50 local citizens petition the installation for creation of a RAB; Federal, state, tribal, or local government representatives request the formation of a RAB; or the installation determines the need for a RAB based on correspondence files, media coverage, consultation of community members and relevant government officials, and responses to communication efforts, such as notices placed in local newspapers.

Two commenters suggested that local, state, and Federal agencies be involved in the Installation Commanders' biennial reassessments of the community's interest in RAB formation. The Department understands that local, state, and Federal agencies are also considered part of an installation's community, and as such, would be part of the Installation Commander's reassessment of community interest.

#### *C. 202.4. Composition of a RAB*

The Department received a few comments requesting further clarification and description of potential conflict of interest rules for RAB

membership. DoD encourages these commenters to review the referenced documentation, the Federal Acquisition Regulation (FAR), for more information. The description provided in the rule is based on the FAR, which is the primary regulation for use by all Federal Executive Agencies in their acquisition of supplies and services with appropriated funds. The FAR can be reviewed online at <http://www.arnet.gov/far/>.

The Department received several comments requesting additional guidelines on the selection of RAB members. Conversely, several comments indicated that the guidelines provided on the selection of RAB members were too burdensome and descriptive. Recognizing that the process for selecting RAB members is sensitive in nature, DoD provided RABs with a process for selecting these members. The Department expects that specific procedures developed by the selection panel will be established by each RAB and included in its operating procedures.

The Department received several conflicting comments requesting that specific individuals be required as members of RABs and opposing comments requesting that those same individuals not be allowed membership. The Department would like to clarify that RABs are part of DoD's stakeholder involvement program, where all interested stakeholders are invited to participate, including individuals, health officials, tribal members, local governments, state officials, and Federal representatives. The Department does not have the authority to require officials, agencies, or individuals that are non-DoD personnel to publicly participate or require their membership in RABs.

Several commenters requested that the Department expand RAB membership opportunities to those individuals that do not live or work in the affected communities. This comment was not incorporated because membership is restricted to those individuals that live or work in the affected communities. RAB meetings are widely publicized and open to all for participation. Representatives of organizations and agencies who live and work outside the affected area are certainly encouraged to voice their opinions and actively participate at RAB meetings. Another commenter requested that the Department further define the term "affected community." DoD encourages each RAB to define the term "affected community" as appropriate, and to include this term in its operating procedures for selecting RAB members.

One commenter requested revised language to transfer the role of appointing community RAB members from the Installation Commanders to community RAB members. The Department did not modify the role of the Installation Commander in this process. If the process outlined in § 202.4(a)(2)(i) of the final rule is followed, the community selects a panel of members and the Installation Commander accepts or rejects all.

One commenter recommended that the RAB member selection panel not announce the list of RAB nominees, but instead transmit the list of nominees to the Installation Commander for appointment. The Department has incorporated this comment as suggested.

One comment recommended the addition of specific criteria to be used by the Installation Commander in determining what "fairly represents the local community." The Installation Commander should be able to find information on the representation of the community in each installation's community Relations Plan (CRP).

One commenter agreed that RABs should have only one representative from each government agency to prevent an inordinate representation by government and DoD officials.

#### D. 202.5. Creating a Mission Statement

One commenter indicated that the language regarding a RAB's mission statement in the preamble was inconsistent with the language provided in the proposed rule. The Department reviewed the rule and noted that the language is consistent.

#### E. 202.6. Selecting Co-Chairs

One commenter requested that the rule allow for the flexibility of multiple community co-chairs. The Department did not incorporate this language in the rule, but recognizes that RABs are unique. One commenter asserted that it is appropriate for the community co-chair to be selected by the community RAB members as required in § 202.6(b).

#### F. 202.7. Developing Operating Procedures

One commenter stated that references to goals and objectives were inconsistent within the proposed rule. A few commenters stated that it is inappropriate for the installation co-chair to determine the goals and objectives of the RAB. The Department updated information on goals and objectives in the final rule. The rule states that, "Clearly defined goals and objectives for the RAB, as determined by the co-chairs in consultation with the RAB," should be addressed. the

preamble of the proposed rule provided further detail on the type of consultation that should take place, including that, "the DoD installation co-chair will listen to, consider, and provide specific responses to the RAB members' comments before finalizing the goals and objectives." The language provided clearly indicates that the RAB as a whole participates in the development of goals and objectives.

One commenter requested that there not be a requirement to publish and submit public notice of RAB meetings. This rule reflects Congressional requirements regarding public notices (see Sec. 317, Pub. L. 136-108, 117 Stat. 1393 (10 U.S.C. 2705(d)(2)); these notices may be purchased through ads in local newspapers.

One commenter requested further clarification regarding a RAB member's function to provide feedback to other community members and to keep the public informed about the proceedings of the RAB. Reaching out to the broader community is an important role of community members. Clarification of a RAB member's function could be provided in the RAB's operating procedures.

One commenter requested that RAB meetings be held off base due to increased security measures and the difficulty for some members to gain access to military installations. The Department considers additional language unnecessary because Section 202.9(a)(2) explicitly states that, "Each RAB meeting shall be held \* \* \* in a manner or place reasonably accessible." It is recommended that additional language regarding meeting locations be incorporated in the RAB's operating procedures. Another comment was received requesting child care and transportation for RAB meetings. Child care and transportation will not be provided for RAB meetings. The Department recognizes that this is a burden that RAB participants bear and appreciates their involvement despite these factors. It is important that participant involvement continue without DoD providing services that could be perceived as creating the potential for biased opinions regarding environmental restoration at DoD sites.

Another commenter stated that all actions performed by a RAB should be available for public comment to ensure an open process. The Administrative Record provides the public with an open process for reviewing the actions performed by a RAB. Also, RAB meetings are open to public participation.

One commenter recommended that public participants be afforded the

opportunity to provide comments at RAB meetings. The Department has incorporated this recommendation in § 202.9(a)(3) to read, "Open solicitation of public comments shall be permitted, and members of the public will have a designated time on the agenda to speak to the RAB committee as a whole."

One commenter stated that the preamble and proposed rule were inconsistent in their descriptions regarding the role of the RAB in developing operating procedures. DoD has incorporated language to state that each RAB develops its own operating procedures and that the co-chairs are responsible for carrying them out.

One commenter stated that copies of all materials presented at RAB meetings, including readable maps, should be available for RAB members and the public. The Department encourages the distribution of presentation materials to RAB meeting participants and requires that these materials be included in the information repository or administrative record as appropriate and when security concerns allow.

One commenter requested that a RAB be able to exercise its authority to change or reduce the frequency of the meeting schedule as needed through its operating procedures. The Department agrees with the commenter and would like to call attention to Section 202.7(a)(5) which indicates that the operating procedures will address meeting frequency and location.

One commenter requested a specific timeframe for the distribution of meeting agendas. Another commenter requested clarification that community members play a key role in the development of the meeting agenda. The Department recommends that if a RAB is facing difficulty distributing meeting agendas, specific recommendations for a timeframe to distribute meeting agendas be made in that RAB's operating procedures. It is impractical and inflexible to set out a specific timeframe for RABs to distribute meeting agendas. The Department agrees that the community should play a key role in the development of the meeting agenda, and for this reason, this language was included as a discussion item in the RAB's operating procedures § 202.7(a)(13).

Several commenters offered supportive statements on the provisions for developing operating procedures. One commenter felt that the operating procedures would work well for existing RABs. In addition, commenters felt that it is appropriate for a RAB to develop specific operating procedures tailored to the needs of that individual RAB.

### G. 202.8. Training RAB Members

Several comments were received pertaining to training for RAB members. A few commenters suggested that training for RABs has been inadequate. The rule has been modified to incorporate comments received that suggest improved language relevant to training. One commenter stated that training that is "unique to and mutually benefits" RABs is not a workable standard. The text was revised to indicate that training would be site-specific and beneficial to RAB members. The Department also expanded this section to recommend training for RAB members that includes clarification of the purpose and responsibilities of RABs, familiarization with cleanup technologies, chemicals of concern, sampling protocols, and information about the availability of independent technical advice and document review through EPA's Technical Assistance Grant (TAG) program and DoD's Technical Assistance for Public Participation (TAPP) program.

### H. 202.9. Conducting RAB Meetings

One commenter stated that copies of all materials presented at RAB meetings, including readable maps, should be available to RAB members and the public. The Department encourages the distribution of presentation materials and readable maps to all RAB meeting participants as appropriate. However, it may not be appropriate in all cases for maps to be distributed to the community due to increased security measures at many installations.

The Department received several comments regarding the RAB voting practices. DoD would like to make clear that voting or polling members is not a requisite action of RABs. Comments stated that DoD members of the RAB should not be allowed to vote and that only RAB community members should have voting privileges. The Department has modified the language in the rule to assert that each RAB member may provide advice as an individual; however, when a RAB decides to vote or poll for consensus, only community members should participate. The Department will not be obligated by votes or consider voting results to be more important than the advice of an individual RAB member.

One commenter requested clarification on whether publications listed on Web sites would meet the requirements of "publishing meeting notices in a local newspaper of general circulation." The Department clarifies that publicizing meeting notices on Web sites would not meet the requirements

of publishing notices in local newspapers. Posting meeting notices on Web sites is a good practice, but should be done in addition to local newspaper requirements.

The Department received a few comments regarding the procedures for recording, approving, and distributing meeting minutes. One commenter requested that transcription services be provided to record RAB meeting minutes. Another commenter requested that the rule set out a specific timeframe for the preparation and distribution of meeting minutes. In recognition of the fact that this final rule was developed to maximize flexibility for RAB members and installations nationwide, the Department has modified the language in the operating procedures Section 202.7(a)(4), recommending that each RAB develop a procedure for recording, approving, and distributing meeting minutes. Specific regulations for recording, approving, and distributing meeting minutes for all RABs nationwide were not included in this rule.

### I. 202.10. RAB Adjournment and Dissolution

The Department received many comments regarding RAB adjournment. Many commenters disagreed with the Installation Commander having the authority to adjourn a RAB. One commenter recommended that the entire RAB agree in writing before it would be adjourned. RAB members are provided multiple opportunities for input should adjournment be considered. The Department would like to clarify that, as stated in § 202.10(a)(2)(i) of the final rule, the Installation Commander shall, "Consult with EPA, state, tribes, RAB members, and the local community, as appropriate, regarding adjourning the RAB and consider all responses before making a final decision." The Installation Commander, as the responsible, accountable Department of Defense contact, will have the authority to adjourn a RAB. The requirement for consultation protects the RAB from unilateral decisions made by DoD personnel.

One commenter requested that "with input from the community" be added to the statement, "an Installation Commander may adjourn." The Department agrees with this recommendation and has incorporated the language into § 202.10(a)(1) of the final rule.

Several other comments were received stating that RABs should not be considered for adjournment when records of decision (RODs) are signed or

all remedies are in place. A commenter recommended that it would be better to adjourn when all sites reach the status of operating properly and successfully. The Department recognizes a RAB may not adjourn when all RODs are signed or all remedies are in place. Meetings should not need to be held as often, but additional input from the community may be necessary or helpful. RABs may want to decide in their operating procedures when it is appropriate or necessary to hold RAB meetings after all RODs are signed or all remedies are in place. It is not expected or required that a RAB adjourn at this time. The Department's experience has shown that after RODs are signed, communities may lose interest in the RAB. The Department provided a list of various circumstances that may lead an Installation Commander, in consultation with EPA, state, tribes, RAB members, and the local community, to adjourn a RAB.

Several commenters requested that RABs not be adjourned when the installation is transferred or cleanup privatized. The Department believes that it may be impractical for DoD to continue to operate RABs at former installations that have been transferred out of DoD control and restoration responsibilities assumed by the transferee. In such cases, after inviting input from the community and consulting with EPA (at NPL sites) and State officials, DoD will endeavor to arrange to have the transferee provide an appropriate means for the public to review and comment upon post-transfer restoration response decisions.

One commenter was concerned that decline in interest during long-term management (LTM) would lead to RAB adjournment, suggesting that the RAB may decide to meet less frequently instead of adjourning. Although lack of interest during LTM may be lead to RAB adjournment, it would not be required, and a change in meeting frequency may be sufficient. The Department recommends that RABs describe in their operating procedures when it is appropriate or necessary to hold RAB meetings during LTM. Stakeholders are also encouraged to utilize their installation's point of contact (POC) for environmental restoration activities and the installation's Community Relations Plan (CRP) to remain involved, regardless of the status of a RAB. Information regarding environmental restoration activities will be shared with the public, (e.g., local media, public meetings, and Web sites) and the POC and CRP may assist interested stakeholders in accessing this information. If the RAB is adjourned

and the community becomes interested again, the RAB can be reestablished.

A few comments were received stating that the process of adjournment and dissolution should be consistent. These processes were not made consistent, because they are employed in different situations, requiring different responses.

The Department received many comments on RAB dissolution. Most of these commenters disagreed with the Installation Commander's role in the dissolution process. The commenters requested that a RAB only be dissolved through a collective decision-making process. The Department would like to clarify that the Installation Commander does not dissolve a RAB. The decision to dissolve a RAB is raised to the Military Component's Deputy Assistant Secretary for Environment or Environment, Safety and Occupational Health. The Installation Commander's role in dissolution includes multiple consultation and notification requirements with EPA, state, tribes, RAB members, and the local community, as appropriate, before providing a recommendation to the Military Component's Deputy Assistant Secretary for Environment or Environment, Safety and Occupational Health. One commenter requested that the notification process require a fact sheet and public meeting. These actions may be taken, but are not specific requirements. Another commenter stated that the Installation Commander should provide "responses to EPA and the state." The Installation Commander is required on multiple occasions to consult with EPA and the state, as appropriate.

One commenter requested that after a RAB is adjourned or dissolved, Installation Commanders should continue to reassess community interest in RAB formation not only when environmental restoration activities are ongoing, but also when these activities may start up again. This comment is incorporated in the rule § 202.10(c).

One commenter stated that the process for reestablishing a previously adjourned or dissolved RAB is too time-intensive for communities that identify immediate health or environmental concerns. The Department would like to clarify that RABs are only one component of an installation's community outreach program. CERCLA (42 U.S.C. 9601, et seq.) and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300) require additional community involvement activities; therefore, an installation's RAB would not be a community's only method of addressing

immediate health or environmental concerns. If an installation identifies immediate health or environmental concerns, the installation should engage appropriate stakeholders by notifying them and holding public meetings.

#### *J. 202.12. Administrative Support and Eligible Expenses*

The Department received several comments regarding the funding of RABs. A few commenters opposed language stating that RABs are "subject to the availability of funds." Another commenter stated that the Department should be required to report in local papers eligible expenses that are requested for RAB formation and operation that are not provided. One commenter requested that the Department clarify who pays for a RAB's administrative cost. Another commenter requested that the Department add informational materials relating to cleanup to the eligible administrative expenses. Regarding the comments that RABs should not be "subject to the availability of funds," it should be clarified that the Department is authorized funding from Congress. DoD relies on this funding to support all programs; therefore, RABs remain "subject to the availability of funds." The Department does not require RABs to report in local papers eligible expenses that are provided for the operation and formation of RABs. This type of discussion is more appropriately conducted at RAB meetings. To clarify the responsibility for a RAB's administrative costs, the Department refers this commenter to § 202.12(a) which states that the "installation shall provide administrative support to establish and operate a RAB." The Department directs the next commenter to § 202.12(b)(7) which states that eligible administrative expenses include, "preparation of meeting agenda materials," which addresses the request for eligible expenses, to include creating information materials for RAB members as it relates to the cleanup.

#### *K. 202.13. Technical Assistance for Public Participation*

One commenter stated that there was insufficient text regarding TAPP and suggested that section 202.13 be moved forward in the rule. The Department published a rule on TAPP that is located in 32 CFR Part 203; DoD did not expand section 202.13 or reorganize the RAB rule. Another commenter recommended that the reference to "in-house assistance to discuss technical issues" be removed from the TAPP section and placed in the training section. The Department agrees and removed this

language from the TAPP section. A final comment regarding the TAPP section suggested that its language was misleading and vague, because it was not identical to EPA's Technical Assistance Grant program. The Department's TAPP program is intended to be a different program; they are not identical.

#### *L. 202.14. Documenting and Reporting Activities and Expenses*

The Department received two comments requesting a change in language where it is stated that the information repository be available at a "single, publicly accessible location." The basis for this comment was that many installations may be located in more than one town, city, or county. The Department agrees that the language in the proposed rule was limiting and has removed the reference to a "single" location in the final rule.

A few commenters requested that copies of each RAB's activities and administrative expenses be provided to the RAB directly or be maintained in the information repository. RAB minutes should be maintained in the information repository. The Military Components are required to track and report this information to fulfill statutory annual reporting requirements established in 10 U.S.C. 2706(a)(2)(j). This Annual Report to Congress is made publicly available. Individuals seeking installation-specific data should request this information from the installation co-chair. If the installation co-chair is not responsive, the request can be referred to the Installation Commander.

#### *M. Web sites*

Several commenters stated that the final rule should include language encouraging the use of Web sites as a communication tool for RABs. The Department agrees that Web sites are a valid and useful communication tool. Throughout the rule, DoD included language to reflect our encouragement and acceptance of this method of communicating. One commenter stated that each RAB should be required to set up and maintain a Web site. Although the Department encourages the use of Web sites in RAB communications, the Department declined to require that each RAB set up and maintain a Web site.

#### *N. Role of an Installation Co-chair*

The Department received several comments regarding the role of installation co-chairs in RABs. One commenter suggested that the concept of co-chairs was impractical and that the "installation co-chair" be replaced with

an "installation representative." One commenter stated that the installation co-chairs had too much control in the formation and operation of RABs. Another commenter felt that it was inappropriate for the delegation of the installation co-chair role to go down the chain of command to civilian staff. Another commenter requested clarification on whether contractors could act on behalf of the installation co-chair. The concept of co-chairs is not considered impractical based on RABs functioning appropriately with community and installation co-chairs for the last 10 years. Although some have stated that the role of an installation co-chair unfairly exceeds that of a community co-chair, great lengths have been taken not only to ensure fairness, but also to clarify the important balance between the installation and community co-chair. Government officials are responsible and must be the ones to make cleanup decisions for action on government lands.

#### O. Consistency

The Department received several comments requesting that language provided in the preamble be consistent with language in the rule. The Department has reviewed and updated the final rule as appropriate.

#### P. Consideration of Comments

The Department received several comments regarding a RAB's process for considering comments. One commenter requested additional language to discuss "careful consideration." Another commenter recommended that language be added for comments to be considered as a consensus, as well as from individual RAB members. One commenter stated the installation be required to respond to all comments. This rule does not preclude any of the suggested comments. Recognizing that RABs are unique to each installation, the Department advises that RABs develop a process for considering comments in their operating procedures. See § 202.7(a)(10). Although collective comments can be considered, the Department will not be obligated by the consensus. Comments will also be considered on an individual basis to ensure that every commenter is recognized.

#### Q. Comment Period

One commenter requested that the comment period be extended in the **Federal Register** to ensure that all RABs were notified when the Register opened. Although the Department did not extend the comment period on the

proposed rule, the rule was sent to all RABs prior to being published as a proposed rule. For informational purposes, DoD mailed the draft proposed rule to over 700 RAB co-chairs. Additionally, these 700 RAB co-chairs were provided copies of the proposed rule when it was published in the **Federal Register**.

#### R. Accountability

The Department received many comments requesting that there be a mechanism to ensure the accountability of DoD actions on a RAB, specifically those actions of the installation co-chair. Several commenters stated that they were unaware of any oversight to ensure that the installation co-chairs were "making a reasonable effort to ensure that a RAB performs its role as effectively as possible." Other commenters requested a method of redress should the RAB not be conducted in accordance with the rule. The Department has worked hard to ensure that chairmanship of the RAB is shared by the installation and community. The Department provides oversight for the RAB program, through the chain of command, to each Component's headquarters and to the Deputy Assistant Secretary. If DoD personnel take inappropriate actions, these actions would be addressed through the chain of command.

#### 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 "significant" 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.

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

(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.

##### 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 primary effect of the RAB rule will be to increase community involvement in DoD's environmental restoration program.

##### 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, DoD 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 the final rule with an explanation of why such an 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.

#### 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 RABs, it does not mandate that any person supply information. 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 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.

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.

#### 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 rule and responsibilities of the Department with respect to state and local governments.

#### List of Subjects in 32 CFR Part 202

Administrative practice and procedure, Environmental protection—restoration, Federal buildings and facilities, Organization and functions (government agencies).

■ Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, is

amended by adding part 202 to read as follows:

## PART 202—RESTORATION ADVISORY BOARDS

### Subpart A—General Requirements

Sec.

- 202.1 Purpose, scope, definitions, and applicability.
- 202.2 Criteria for establishment.
- 202.3 Notification of formation of a restoration advisory board.
- 202.4 Composition of a RAB.

### Subpart B—Operating Requirements

- 202.5 Creating a mission statement.
- 202.6 Selecting co-chairs.
- 202.7 Developing operating procedures.
- 202.8 Training RAB members.
- 202.9 Conducting RAB meetings.
- 202.10 RAB adjournment and dissolution.
- 202.11 Documenting RAB activities.

### Subpart C—Administrative Support, Funding, and Reporting Requirements

- 202.12 Administrative support and eligible expenses.
- 202.13 Technical assistance for public participation.
- 202.14 Documenting and reporting activities and expenses.

**Authority:** 5 U.S.C. 551 *et seq* and 10 U.S.C. 2705

### Subpart A—General Requirements

#### § 202.1 Purpose, scope, definitions, and applicability.

(a) *Purpose.* The purpose of this part to establish regulations regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of Restoration Advisory Boards (RABs).

(b) *Purpose and scope of responsibilities of RABs.* The purpose of a RAB is to provide:

(1) An opportunity for stakeholder involvement in the environmental restoration process at Department of Defense (DoD) installations. Stakeholders are those parties that may be affected by environmental restoration activities at the installation.

(2) A forum for the early discussion and continued exchange of environmental restoration program information between DoD installations, regulatory agencies, tribes, and the community.

(3) An opportunity for RAB members to review progress, participate in a dialogue with, and provide comments and advice to the installation's decision makers concerning environmental restoration matters. Installations shall give careful consideration to the comments provided by the RAB members.

(4) A forum for addressing issues associated with environmental

restoration activities under the Defense Environmental Restoration Program (DERP) at DoD installations, including activities conducted under the Military Munitions Response program (MMRP) to address unexploded ordnance, discarded military munitions, and the chemical constituents of munitions. Environmental groups or advisory boards that address issues other than environmental restoration activities are not governed by this regulation.

(c) *Definitions.* In this section:

(1) *Community RAB member* shall mean those individuals identified by community members and appointed by the Installation Commander to participate in a RAB who live and/or work in the affected community or are affected by the installation's environmental restoration program.

(2) *Environmental restoration* shall include the identification, investigation, research and development, and cleanup of contamination from hazardous substances, including munitions and explosives of concern, and pollutants and contaminants.

(3) *Installation* shall include active and closing DoD installations and formerly used defense sites (FUDS).

(4) *Installation Commander* shall include the Commanding Officer or the equivalent of a Commanding Officer at active installations; the Installation Commander or other Military Department officials who close the facility and are responsible for its disposal at Base Realignment and Closure (BRAC) installations; or the U.S. Army Corps of Engineers Project Management District Commander at FUDS.

(5) *Public participants* shall include anyone else who may want to attend the RAB meetings, including those individuals that may not live and/or work in the affected community or may not be affected by the installation's environmental restoration program but would like to attend and provide comments to the RAB.

(6) *Stakeholders* are those parties that may be affected by environmental restoration activities at an installation, including family members of military personnel and civilian workers, local and state governments and EPA for NPL properties, tribal community members and indigenous people, and current landowners, as appropriate.

(7) *Tribes* shall mean any Federally-recognized American Indian and Alaska Native governments as defined by the most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in the **Federal Register** pursuant to Section 104 of the Federally Recognized Tribe Act.

(8) *RAB adjournment* shall mean when an Installation Commander, in consultation with the Environmental Protection Agency (EPA), state, tribes, RAB members, and the local community, as appropriate, close the RAB based on a determination that there is no longer a need for a RAB or when community interest in the RAB declines.

(9) *RAB dissolution* shall mean when an Installation Commander, with the appropriate Military Component's Environmental Deputy Assistant Secretary's approval, disbands a RAB that is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects. Installation Commanders are expected to make every reasonable effort to ensure that a RAB performs its role as effectively as possible and a concerted attempt is made to resolve issues that affect the RAB's effectiveness. There are circumstances, however, that may prevent a RAB from operating effectively or fulfilling its intended purpose.

(d) *Other public involvement activities.* A RAB should complement other community involvement efforts occurring at an installation; however, it does not replace other types of community outreach and participation activities required by applicable laws and regulations.

(e) *Applicability of regulations to existing RABs.* The regulations in this part apply to all RABs regardless of when the RAB was established.

(f) *Guidance.* The Office of the Deputy Under Secretary of Defense for Environment shall issue guidance regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs pursuant to this rule. The issuance of any such guidance shall not be a precondition to the establishment of RABs of the implementation of this part.

#### § 202.2 Criteria for establishment.

(a) *Determining if sufficient interest warrants establishing a RAB.* A RAB should be established when there is sufficient and sustained community interest, and any of the following criteria are met:

(1) The closure of an installation involves the transfer of property to the community,

(2) At least 50 local citizens petition the installation for creation of a RAB.

(3) Federal, state, tribal, or local government representatives request the formation of a RAB, or



(4) The installation determines the need for a RAB. To determine the need for establishing a RAB, an installation should:

- (i) Review correspondence files,
- (ii) Review media coverage,
- (iii) Consult local community members,
- (iv) Consult relevant government officials, and
- (v) Evaluate responses to communication efforts, such as notices placed in local newspapers and, if applicable, announced on the installations Web site.

(b) *Responsibility for forming or operating a RAB.* The installation shall have lead responsibility for forming and operating a RAB.

(c) *Converting existing Technical Review Committees (TRCs) to RABs.* In accordance with 10 U.S.C. 2705(d)(1), a RAB may fulfill the requirements of 10 U.S.C. 2705(c), which directs DoD to establish TRCs. DoD recommends that, where TRCs or similar advisory groups already exist, the TRC or similar advisory group be considered for conversion to a RAB, provided there is sufficient and sustained interest within the community.

#### § 202.3 Notification of formation of a Restoration Advisory Board.

Prior to establishing a RAB, an installation shall notify potential stakeholders of its intent to form a RAB. In announcing the formation of a RAB, the installation should describe the purpose of a RAB and discuss opportunities for membership.

#### § 202.4 Composition of a RAB.

(a) *Membership.* At a minimum, each RAB shall include representatives from DoD and the community. RAB community membership shall be well balanced and reflect the diverse interests within the local community.

(1) *Government representation.* The RAB may also include representatives from the EPA at the discretion of the Regional Administrator of the appropriate EPA Regional Office, and state, tribal, and local governments, as appropriate. At closing installations where BRAC Cleanup Teams (BCT) exist, representatives of the BCT may also serve as the government representative(s) of the RAB. The Department encourages individuals and agencies involved with BRAC to participate in RABs at closing installations.

(2) *Community representation.* Community RAB members should live and/or work in the affected community or be affected by the installation's environmental restoration program.

While DoD encourages individual tribal members to participate on RABs, RABs in no way replace or serve as a substitute forum for the government-to-government relationship between DoD and Federally-recognized tribes.

(i) To support the objective selection of community RAB members, installations will use a selection panel comprised of community members to nominate community RAB members. The Installation Commander, in consultation with the state, tribal, and local governments and EPA, as appropriate, will identify community interests and solicit names of individuals who can represent these interests on the selection panel. The panel will establish the procedures for nominating community RAB members, the process for reviewing community interest, and criteria for selecting community RAB members. The panel will transmit the list of RAB nominees to the Installation Commander for appointment.

(ii) Following the panel nominations, the Installation Commander, in consultation with the state and EPA, as appropriate, will review the nominations to ensure the panel fairly represents the local community. The Installation Commander will accept or reject the entire list of RAB nominees for appointment.

(b) *Chairmanship.* Each RAB established shall have two co-chairs, one representing the DoD installation and the other the community. Co-chairs shall be responsible for directing and managing the RAB operations.

(c) *Compensation for community members of the RAB.* The community co-chair and community RAB members serve voluntarily. DoD will not compensate them for their participation.

#### Subpart B—Operating Requirements

##### § 202.5 Creating a mission statement.

The installation and community co-chair, in conjunction with the RAB members, shall determine the RAB mission statement in accordance with guidance provided by the DoD Components.

##### § 202.6 Selecting co-chairs.

(a) *DoD installation co-chair.* The DoD installation co-chair shall be selected by the Installation Commander or equivalent, or in accordance with Military Component-specific guidance.

b. *Community co-chair.* The community co-chair shall be selected by the community RAB members.

##### § 202.7 Developing operating procedures.

Each RAB shall develop a set of operating procedures and the co-chairs

are responsible for carrying them out. Areas that should be addressed in the procedures include:

(a) Clearly defined goals and objectives for the RAB, as determined by the co-chairs in consultation with the RAB,

(b) Meeting announcements,

(c) Attendance requirements of members at meetings,

(d) Development, approval and distribution procedures for the minutes of RAB meetings,

(e) Meeting frequency and location,

(f) Rules of order,

(g) The frequency and procedures for conducting training,

(h) Procedures for selecting or replacing co-chairs and selecting, replacing, or adding RAB members,

(i) Specifics on the size of the RAB, periods of membership, and co-chair length of service,

(j) Review of public comments and responses,

(k) Participation of the general public,

(l) Keeping the public informed about proceedings of the RAB,

(m) Discussing the agenda for the next meeting and issues to be addressed, and

(n) Methods for resolving disputes.

##### § 202.8 Training RAB members.

Training is not required for RAB members. It may be advisable, however, to provide RAB members with some initial orientation training regarding the purpose and responsibilities of the RAB, familiarization on cleanup technologies, chemicals of concern, and sampling protocols, as well as informing them of the availability of independent technical advice and document review through EPA's Technical Assistant Grant program and DoD's Technical Assistance for Public Participation (TAPP) program, to enable them to fulfill their responsibilities. Training should be site-specific and beneficial to RAB members. The DoD installation may also provide in-house assistance to discuss technical issues. Funding for training activities must be within the scope of administrative support for RABs, as permitted in § 202.12.

##### § 202.9 Conducting RAB meetings.

(a) *Public participation.* RAB meetings will be open to the public.

(1) The installation co-chair shall prepare and publish a timely public notice in a local newspaper of general circulation announcing each RAB meeting. If applicable, it is recommended that the meeting also be announced on the installation's Web site.

(2) Each RAB meeting shall be held at a reasonable time and in a manner or

place reasonably accessible to and usable by all participants, including persons with disabilities.

(3) Presentation materials and readable maps should be provided to all meeting participants as appropriate.

(4) Interested persons shall be permitted to attend, appear before, or file statements with any RAB, subject to such reasonable rules or regulations as may be prescribed. Open solicitation of public comments shall be permitted and members of the public will have a designated time on the agenda to speak to the RAB committee as a whole.

(b) *Nature of discussions.* The installation shall give careful consideration to all comments provided by individual RAB members. Group consensus is not a prerequisite for RAB input. Each member of the RAB may provide advice as an individual; however, when a RAB decides to vote or poll for consensus, only community members should participate.

(c) *Meeting minutes.* The installation co-chair, in coordination with the community co-chair, shall prepare the minutes of each RAB meeting.

(1) The RAB meeting minutes shall contain a record of the persons present; a complete and accurate description of matters discussed and comments received; and copies of all reports received, issued, or approved by the RAB. The accuracy of all minutes shall be certified by the RAB co-chairs. RAB minutes should be kept in the information repository; however, if the RAB minutes reflect decision-making, copies should also be documented in the Administrative Record.

(2) The records, reports, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each RAB shall be available for public inspection and copying at a publicly accessible location, such as the information repositories established under the installation's Community Relations Plan, a public library, or in the offices of the installation to which the RAB reports, until the RAB ceases to exist.

#### § 202.10 RAB adjournment and dissolution.

(a) *RAB adjournment.*—(1) *Requirements for RAB adjournment.* An Installation Commander may adjourn a RAB with input from the community when there is no longer a need for a RAB or when community interest in the RAB no longer exists. An Installation Commander may consider adjourning the RAB in the following situations:

(i) A record of decision has been signed for all DERP sites on the installation,

(ii) An installation has achieved response complete at all sites and no further environmental restoration decisions are required,

(iii) An installation has all remedies in place,

(iv) The RAB has achieved the desired end goal as defined in the RAB Operating Procedures,

(v) There is no longer sufficient, sustained community interest, as documented by the installation with RAB community members and community-at-large input, to sustain the RAB. The installation shall continue to monitor for any changes in community interest that could warrant reactivating or reestablishing the RAB, or

(vi) The installation has been transferred out of DoD control and day-to-day responsibility for making restoration response decisions has been assumed by the transferee.

(2) *Adjournment procedures.* If the Installation Commander is considering adjourning the RAB, the Installation Commander shall:

(i) Consult with EPA, state, tribes, RAB members, and the local community, as appropriate, regarding adjourning the RAB and consider all responses before making a final decision.

(ii) Document the rationale for adjournment in a memorandum in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation, and describe other ongoing public involvement opportunities that are available if the Installation Commander decides to adjourn the RAB.

(b) *RAB dissolution.*—(1) *Requirements for RAB dissolution.* An Installation Commander may recommend dissolution of a RAB when a RAB is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects as described in § 202.1(b).

(2) *Dissolution procedures.* If the Installation Commander is considering dissolving the RAB, the Installation Commander shall:

(i) Consult with EPA, state, tribal and local government representatives, as appropriate, regarding dissolving the RAB.

(ii) Notify the RAB community co-chair and members in writing of the intent to dissolve the RAB and the

reasons for doing so and provide the RAB members 30 days to respond in writing. The Installation Commander shall consider RAB member responses, and in consultation with EPA, state, tribal and local government representatives, as appropriate, determine the appropriate actions.

(iii) Notify the public of the proposal to dissolve the RAB and provide a 30-day public comment period on the proposal, if the Installation Commander decides to proceed with dissolution. At the conclusion of the public comment period, the Installation Commander will review the public comments, consult with EPA, state, tribal and local government representatives, as appropriate, and, if the Installation Commander still believes dissolution is appropriate, render a recommendation to that effect.

(iv) Send the recommendation, responsiveness summary, and all supporting documentation via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Military Component's Environmental Deputy Assistant Secretary (or equivalent) shall notify the Office of the Deputy Under Secretary of Defense (Installations & Environment) (or equivalent) of the decision to approve or disapprove the request to dissolve the RAB and the rationale for that decision.

(v) Document the recommendation, responsiveness summary, and the rationale for dissolution in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation and describe other ongoing public involvement opportunities that are available, once the Military Component's Environmental Deputy Assistant Secretary (or equivalent) makes a final decision.

(c) *Reestablishing an adjourned or dissolved RAB.* An Installation Commander may reestablish an adjourned or dissolved RAB if there is sufficient and sustained community interest in doing so, and there are environmental restoration activities still ongoing at the installation or that may start up again. Where a RAB is adjourned or dissolved and environmental restoration activities continue, the Installation Commander should reassess community interest at least every 24 months. When all environmental restoration decisions have been made and required remedies are in place and are properly operating

at an installation, reassessment of the community interest for reestablishing the RAB is not necessary. When additional environmental restoration decisions have to be made resulting from subsequent actions, such as long-term management and five-year reviews, the installation will reassess community interest for reestablishing the RAB. Where the reassessment finds sufficient and sustained community interest at previously adjourned or dissolved RABs, the Installation Commander should reestablish a RAB. Where the reassessment does not find sufficient and sustained community interest in reestablishing the RAB, the Installation Commander shall document in a memorandum for the record the procedures followed in the reassessment and the findings of the reassessment. This document shall be included in the Administrative Record for the installation. If there is interest in reestablishment at a previously dissolved RAB, but the Installation Commander determines that the same conditions exist that required the original dissolution, he or she will request, through the chain-of-command to the Military Component's Deputy Assistant Secretary, an exception to reestablishing the RAB. If those conditions no longer exist at a previously dissolved RAB, and there is sufficient and sustained interest in reestablishment, the Installation Commander should recommend to the Deputy Assistant Secretary that the RAB be reestablished. The Deputy Assistant Secretary will take the Installation Commander's recommendation under advisement and may approve that RAB for reestablishment.

(d) *Public comment.* If the Installation Commander intends to recommend dissolution of a RAB or reestablish a dissolved RAB, the Installation Commander shall notify the public of the proposal to dissolve or reestablish the RAB and provide a 30-day public comment period on the proposal. At the conclusion of the public comment period, the Installation Commander shall review public comments; consult with EPA and state, tribal, or local government representatives, as appropriate; prepare a responsiveness summary; and render a recommendation. The recommendation, responsiveness summary, and all supporting documentation should be sent via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Installation Commander shall notify the public of the decision.

#### § 202.11 Documenting RAB activities.

(a) The installation shall document information on the activities of a RAB in the Information Repository. These activities shall include, but are not limited to:

- (1) Installation's efforts to survey community interest in forming a RAB,
- (2) Steps taken to establish a RAB where there is sufficient and sustained community interest,
- (3) How the RAB related to the overall community involvement program, and
- (4) Steps taken to adjourn, dissolve, or reestablish the RAB.

(b) When RAB input has been used in decision-making, it should be documented as part of the Administrative Record.

#### Subpart C—Administrative Support, Funding, and Reporting Requirements

##### § 202.12 Administrative support and eligible expenses.

(a) *Administrative support.* Subject to the availability of funding, the installation shall provide administrative support to establish and operate a RAB.

(b) *Eligible administrative expenses for a RAB.* The following activities specifically and directly associated with establishing and operating a RAB shall qualify as an administrative expense of a RAB:

- (1) RAB establishment.
- (2) Membership selection.
- (3) Training if it is:
  - (i) Site specific and benefits the establishment and operation of a RAB.
  - (ii) Relevant to the environmental restoration activities occurring at the installation.
- (4) Meeting announcements.
- (5) Meeting facilities.
- (6) Meeting facilitators, including translators.
- (7) Preparation of meeting agenda materials and minutes.
- (8) RAB-member mailing list maintenance and RAB materials distribution.

(c) *Funding.* Subject to the availability of funds, administrative support to RABs may be funded as follows:

- (1) At active installations, administrative expenses for a RAB shall be paid using funds from the Military Component's Environmental Restoration accounts.
- (2) At BRAC installations, administrative expenses for a RAB shall be paid using BRAC funds.
- (3) At FUDS, administrative expenses for a RAB shall be paid using funds from the Environmental Restoration account for the Formerly Used Defense Sites program.

##### § 202.13 Technical assistance for public participation.

Community members of a RAB or TRC may request technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and environmental restoration activities conducted, or proposed to be conducted, at the installation in accordance with 10 U.S.C. 2705(e) and the TAPP regulations located in 32 CFR Part 203.

##### § 202.14 Documenting and reporting activities and expenses.

The installation at which a RAB is established shall document the activities and meeting minutes and record the administrative expenses associated with the RAB in the information repository at a publicly accessible location. Installations shall use internal department and Military Component-specific reporting mechanisms to submit required information on RAB activities and expenditures.

Dated: May 1, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. 06-4246 Filed 5-11-06; 8:45 am]

BILLING CODE 5001-06-M

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 165

[CGD09-06-024]

RIN 1625-AA00

##### Safety Zone; Rockets for Schools, Sheboygan, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in Sheboygan, WI, for the Rockets for Schools model rocket launch. This safety zone is needed to protect personnel and property from hazards associated with the storage, preparation, launching and recovery of model rockets, as well as for protection of the general public and vessels near where the rockets are being launched. Entry into this zone is prohibited unless authorized by the Captain of the Port or his duly appointed representative.

**DATES:** This rule is effective from 8 a.m. (local) on May 13, 2006 through 5 p.m. (local) on May 13, 2006.

# Kelly Air Force Base Restoration Advisory Board

## CHARTER *(Approved, as amended, on July 29, 1998)*

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### Foreword.

#### Part A: Restatement.

This revised, amended and restated Restoration Advisory Board Charter, herein referred to as "the Charter," shall serve as the organizational and operational charter of the Kelly Air Force Base Restoration Advisory Board, herein sometimes referred to as "RAB" or "Board."

#### Part B: Basis and Authority for Charter.

The basis and authority for this Charter are contained in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendment and Reauthorization Act (SARA) of 1986, particularly Sections 120 (a), 120(f), and 121(f), and 10 USC 2705, enacted by Section 211 of SARA, and Executive Orders numbers 12856, 12250, 12875, and 12898. To the extent feasible, the activities of the RAB are to be conducted in accordance with the guidance stated in the RAB Implementation Guidelines issued by the U.S. Department of Defense September 27, 1994 (Appendix A); and with the Proposed Rules for Restoration Advisory Boards proposed by the Department of Defense and published in the Federal Register on August 6, 1996 (Appendix B).

Part One: Mission Statement.

The mission of the Kelly Air Force Base Restoration Advisory Board shall be:

**Section 1.1** To represent stakeholders and provide community outreach involvement, timely review, advice, and comments on DOD environmental cleanup actions and proposed actions with respect to releases of hazardous substances at Kelly Air Force Base and to act as a watchdog for the community;

**Section 1.2** To conduct a proactive program for providing information about environmental contamination and its effects and restoration decisions to stakeholders and to ensure that all segments of the public have an opportunity to be heard; and

**Section 1.3** To ensure that all restoration stakeholders, regardless of race, color, national origin, or income, have an opportunity for public participation in the making of restoration decisions.

## Part Two: Statement of Purpose.

The Kelly Air Force Base RAB shall have the following purposes:

**Section 2.1** To provide an expanded opportunity for input by stakeholders into the environmental restoration process (stakeholders being persons who are actually or potentially affected by Kelly Air Force Base restoration activities);

**Section 2.2** To ensure public input into the planning and implementation of environmental restoration activities at Kelly Air Force Base;

**Section 2.3** To promote community awareness and obtain constructive community review and comment on environmental restoration actions to accelerate the overall cleanup and potential community reuse of portions of Kelly Air Force Base; and

**Section 2.4** To provide a forum for consultation, advice, and information sharing among Kelly Air Force Base and Board Members on the following activities and issues:

- 2.4.1 Identifying environmental restoration activities and projects at Kelly Air Force Base;
- 2.4.2 Monitoring progress on these activities and projects;
- 2.4.2 Collecting information regarding restoration priorities at Kelly Air Force Base;
- 2.4.3 Addressing land use, level of restoration, acceptable risk, waste management and technology development issues related to environmental restoration at Kelly Air Force Base; and
- 2.4.4 Developing environmental restoration strategies for Kelly Air Force Base.

## Part Three: RAB Operating Rules.

### Section 3.1. Board Membership.

**3.1.1 Qualifications.** The membership of the RAB will be well balanced and will include members of the San Antonio community who reflect the diverse interests of stakeholders. RAB community members should live and/or work in the area affected by the Kelly Air Force Base environmental restoration program. The RAB will also include representatives of the United States Department of Defense; the United States Environmental Protection Agency; the Texas Natural Resources Conservation Commission; other state agencies; and local governmental agencies. The total number of Board members shall not be greater than twenty-five (25).

**3.1.2. Applications.** Designated representatives of community groups and special interest groups, as well as individual citizens, may apply for membership to the Board as a community member. To be considered for selection as a Board community member, a person must submit an application on a form approved by the Board at least fourteen (14) days prior to the date of the Board meeting at which membership will be considered for approval. The applicant must be present at the Board meeting at which the applicant's membership is considered. Applicants for Board membership must be approved by a majority of Board members.

**3.1.3 No Compensation.** Members shall serve without compensation. All expenses incident to travel and review shall be borne by the respective members or their organizations. Subject to the availability of funds and approval by Kelly Air Force Base, the Air Force will fund per diem and travel expenses for Board Members attending training courses or seminars on environmentally-related matters relevant to Members' duties on the Board.

**3.1.4 Attendance.** Members are expected to attend all Board meetings or to request their respective alternates to attend in their absence. If a member fails to attend or send an alternate to two or more consecutive regularly scheduled or specially called meetings of the entire RAB, the Board co-chairs may, with the approval of a two-thirds majority of the Board, ask the member to resign. The Board membership of any member who fails to attend or send an alternate to four consecutive meetings shall be deemed vacated without further action by the Board.

**3.1.5 Resignation.** Any member who determines he or she is unable to continue to participate fully may submit a resignation in writing or orally to either of the Board co-chairs. A resigning member may nominate a new member to replace the resigning member for the remainder of that member's term. Such replacement shall be subject to approval by the Board.

**3.1.6 Public Input.** Members should be willing to promote public input into the planning and implementation of environmental restoration activities at Kelly Air Force Base and to communicate with the local community members and interest groups concerning base cleanup issues. Members will serve as a direct and reliable conduit for information flow to and from the community. To improve communication between the public and the Board, members' names, addresses, and telephone numbers will be listed in meeting minutes and made available to members of the public upon request, unless a member requests that such information not be disclosed because of privacy considerations.

**3.1.7 Terms.** The term of office for Board members is two years, commencing on January 1; provided, however, that members serving on the Board on the date this Charter is effective shall draw lots to determine whether their current terms expire December 31, 1999 or December 31, 2000, and the terms of such members, regardless of actual length, shall be considered two-year terms for the purpose of this paragraph. After serving all or part of a two-year term, a member may continue to serve one or more additional two-year terms, if nominated and appointed, until the Board is terminated. To be eligible for such additional terms the member must continue to meet the qualifications stated in this Part Three of this Charter). Membership applications from interested persons will be accepted at any time; however, priority consideration will be given those applicants who clearly enhance the diverse nature of the membership.

### **Section 3.2 Board Members' Guiding Principles.**

In order to accomplish the mission and purpose of the RAB, and in order to conduct productive meetings, Board members will adhere to the following guiding principles:

- 3.2.1** Remain open at all times to other points of view, consider reasonable alternatives, and focus on recommending the best way of accomplishing cleanup goals;
- 3.2.2** Be honest and keep commitments on assignments or providing information;



- 3.2.3 Communicate in an open, civil, organized, focused, and effective manner at all times;
- 3.2.4 Ensure that domination of discussion or hidden agendas are ruled out of order;
- 3.2.5 Require disclosure of actual or potential conflicts of interest prior to discussion of an item, and require that a member with such a conflict of interest refrain from voting;
- 3.2.6 Ensure that all members have reasonable access to all environmental information related to restoration activities; and
- 3.2.7 Eliminate unnecessary, ineffective, or redundant processes whenever possible.

**Section 3.3 Board Members' Responsibilities.**

RAB members will, to the extent possible, undertake the following responsibilities:

- 3.3.1 Serve on at least one sub-committee and disseminate information about that subcommittee's work to other RAB members;
- 3.3.2 Develop appropriate information when presenting a report or representing a group or constituency;
- 3.3.3 Represent the interests of the RAB in communicating with local community members and interest groups; and
- 3.3.4 Work together to make recommendations to the Air Force in furtherance of the goal of accelerating cleanup activities.

**Section 3.4. Board Officers and Meetings.**

The RAB meetings shall be conducted as provided in this section.

**3.4.1 Co-chairs Preside.** The Restoration Advisory Board shall be co-chaired by a person assigned to or employed by San Antonio Air Logistics Center, Kelly Air Force Base, and selected by the Commander as Installation Co-chair, and a community member as Community Co-chair. The responsibility for presiding over the meetings will be shared by the Co-chairs. The Co-chairs or their alternates should attend all meetings.

**3.4.2 Open Meetings.** The Co-chairs will preside over meetings in a fair and impartial manner that ensures each Board member the opportunity to participate in the restoration advisory process and interested members of the public are afforded the opportunity to communicate their views on Board business. Although the RAB is not a state or local governing body or commission subject to the Texas Open Meetings Act, RAB meetings will, to the extent reasonable and practicable, be open to the public and otherwise held in accordance with the policy and provisions of the Act.

**3.4.3 Election of Co-chair.** The Community Co-chair will be selected by a majority vote of the Board community members. The Board Community Co-chair will serve a 12-month term, commencing with the second Board meeting in each calendar year. A Co-chair may serve two or more terms, including consecutive terms, if approved by the Board community members.

**3.4.4 Removal of Co-chair.** The community Board members may by a two-thirds majority vote remove a Community Co-chair prior to the expiration of the term of office of such Co-chair if that person is determined to be ineffective or detrimental to the progress of the Board. The vote to remove a Community Co-chair shall be taken at the meeting following the one at which the removal is proposed.

**3.4.5 Meeting Schedule.** Regular meetings of the Board shall be held at least quarterly at times approved by the Co-chairs, with the advice of the Board members. The meetings will be held at an off-base location, unless arrangements cannot be reasonably made. Special meetings may be held at any time if deemed necessary by the Co-chairs, provided that all members shall be given notice of any special meeting not later than fourteen (14) days prior to the date of such meeting. The presence of nine (9) members, in addition to the Installation co-chair, shall constitute a quorum at any regular or special meeting of the Board, provided that at least six (6) of the members present are community members as described in the Section 3.1.1.

**3.4.6 Agendas.** Meeting agendas will be set by the Co-chairs. Board members who wish to suggest items for the agenda shall submit such items to one of the Co-chairs not later than fourteen (14) days prior to the meeting. Base personnel shall be responsible for providing written notification to all Board members of the upcoming agenda, date, time, and place of the scheduled Board meetings.

**3.4.7 Contents of Minutes.** Base personnel shall be responsible for recording and disseminating minutes of Board meetings. Spanish translations of the minutes shall be made available upon request. A list of Board members who attend each meeting will be incorporated into meeting minutes. The minutes shall include any action items that may be assigned during a meeting. The

responsible person will brief the Board on the progress on each action item until the action item is closed.

**3.4.8 Distribution of Minutes.** A copy of the Board meeting minutes will be sent to each Board member within twenty-one (21) calendar days of the meeting. Copies of meeting minutes and transcripts will be available for public review in the information repositories established at the science and technology section of the San Antonio Central Library and at the Kelly Air Force Base Library.

**3.4.9 Board Members' Comments.** In order to ensure public input into the planning and implementation of environmental restoration activities, Board Members are expected to review and provide comment on various environmental restoration documents. Board Members will submit written comment to the Community Co-chair on the subject documents within the time frame specified, which shall be not less than ten (10) days nor more than forty-five (45) days. The Community Co-chair will consolidate comments from the members and provide them to the Board for consideration at committee or Board meetings.

**3.4.10 Rules of Order.** RAB meetings will be conducted according to Roberts Rules of Order. The Co-chairs will provide each member with his or her own copy of the rules. The Co-chairs shall appoint a parliamentarian.

**3.4.11 Administrative Support.** The Installation Co-chair will ensure that adequate administrative support is made available to establish and operate the RAB. The RAB may seek funding from additional sources to supplement the support provide by the Air Force.

**3.4.12 Sub-committees.** The Co-chairs will jointly appoint sub-committees of the Board for Technical Review, Administrative, and other matters at their discretion or at the request of the Board.

**3.4.13 Administrative Record.** Final documents, members' comments reviewed by the Board, responses to action items, and Board meeting minutes will be made part of the Administrative Record of the RAB.

**3.4.14 Information Repositories.** Kelly Air Force Base has established two information repositories for all public documents relating to restoration activities. These repositories are located at the science and technology section of the Main San Antonio Library and at the Kelly Air Force Base Library. Board members are authorized access to all documents, studies, or items of information that have been placed in the public repositories or distributed at Board meetings.

**3.4.15 Document Copies.** In addition to information placed in the public repositories, the Installation will provide to the Board Community Co-chair at least one copy of each draft final preliminary assessment/ site investigation, remedial investigation, focused feasibility study and feasibility study document for review and/or dissemination at the same time the document is provided to state and federal regulators. One copy of each other draft final restoration document will be provided to the Community Co-chair at the same time such document is provided to the regulators. Additional copies of documents may be requested and will be provided if sufficient interest is demonstrated. The Co-chair shall make the document copies provided accessible to the Board community members.

**3.4.16 Reportable Releases.** In keeping with the intent of the Emergency Planning and Community Right-To-Know Act and other applicable federal environmental acts, the Board will appoint a committee to be notified via telephone by Kelly Air Force Base personnel of any reportable releases or significant environmental incidents involving hazardous substances. Such notification will occur as soon as practicable after regulatory agencies have been notified. In addition, a listing of any reportable releases or incidents as described above and a summary of remedial actions taken or planned will be made available to Board members at or before the Board meeting next following the release or incident.

### **Section 3.5. Effective Date and Amendments**

**3.5.1 Effective Date.** The effective date of this Charter shall be the date of approval by a two-thirds majority of a duly constituted quorum of the Board meeting in a regularly called meeting. Such approval shall be indicated by the execution below by the two Co-chairs.

**3.5.2 Amendments.** This Charter may be further amended by a two-thirds majority vote of the members present at a meeting following a meeting in which the amendment was proposed. Such proposed amendment shall be in writing and distributed to all Board members prior to the proposal meeting at which it is discussed and considered for approval. Amendments must be consistent with applicable laws, regulations, guidelines, Air Force agreements with state and federal regulatory agencies, and the statutes listed in the Foreword of this Charter (Basis and Authority for Charter).

### **Section 3.6. Expiration**

**3.6.1 Expiration upon Completion.** This Charter will expire without further action by the RAB or any other party upon completion of the RAB's function with respect to the restoration of Kelly AFB.


**Certification of RAB Approval**

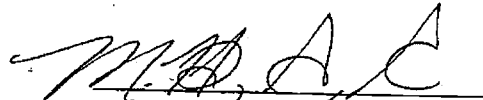
The duly appointed Kelly Air Force Base Restoration Advisory Board Co-chairs certify that the foregoing RAB Charter, having as attachments thereto Appendices A and B identified below, was approved unanimously by the Board members present and voting at a duly called regular meeting of the Board, at which a quorum was present, held open to the public on July 29, 1998, at Winston Elementary School, San Antonio, Texas.

IN WITNESS WHEREOF, we have set our hands below.

**Installation Co-chair:**

**Community Co-chair:**





Robert M. Murdock  
Brigadier General, United States Air Force  
Vice Commander  
San Antonio Air Logistics Center  
Kelly Air Force Base

M. Damian Sandoval

Date: 18 Aug 98

Date: 20 Aug 98

**Attachments:**

**Appendix A** - Department of Defense RAB Implementation Guidelines  
(September 27, 1994)

**Appendix B** - Department of Defense Proposed Rules for Restoration Advisory  
Boards (August 6, 1996)

APPENDIX A

(to Kelly AFB Restoration Advisory Board Charter)

# Restoration Advisory Board Implementation Guidelines

September 1994

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*Restoration Advisory Board Implementation Guidelines, September 1994*

# I. BACKGROUND

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The United States Environmental Protection Agency (EPA) and the Department of Defense (DoD) recognize the importance of public involvement at military installations that require environmental restoration. Therefore, EPA and DoD have developed joint Restoration Advisory Board (RAB) guidelines. DoD policies on community involvement can be found in the *"Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program,"* April 14, 1994.

RABs bring together people who reflect the diverse interests within the local community, enabling the early and continued flow of information between the affected community, DoD and environmental oversight agencies. DoD is creating RABs to ensure that all stakeholders have a voice and can actively participate in a timely and thorough manner in the review of restoration documents. RAB community members will provide advice as individuals to the decision-makers on restoration issues. It is a forum to be used for the expression and careful consideration of diverse points of view. The RAB complements other community involvement efforts, but does not replace them. The DoD installation will continue to be responsible for fulfilling all statutorily mandated public involvement requirements.

This document provides guidelines to assist DoD installations on how to develop and implement a RAB and the role of environmental oversight agencies in this process. It is intended to be flexible so the DoD installation can adapt the RAB to meet the individual needs of the community.

The guidelines are based on recommendations contained in the February 1993, "Interim Report of the Federal Facilities Environmental Restoration Dialogue Committee." While not identical, they are generally consistent with the Committee's recommendations.

Although these guidelines are intended to apply at all military installations, EPA's involvement on a RAB will vary based on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) National Priorities List (NPL) status of the installation. EPA is committed to full involvement on RABs as the Federal regulatory agency for all DoD installations on the NPL or at base closure sites where EPA has received resources from DoD. EPA's involvement will be at the discretion of EPA's regional office for non-NPL, non-base closure or base closure installations where EPA has not been given resources from DoD.

For this document, the term "stakeholder" is defined as parties that are actually or potentially affected by restoration activities at an installation.

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*Restoration Advisory Board Implementation Guidelines, September 1994*



## II. RAB DEVELOPMENT

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Most DoD installations have already established Technical Review Committees (TRCs) to provide interested parties with a forum to discuss and provide input into site restoration activities as required by 10 USC 2705(c) and Executive Order 12580, "Superfund Implementation." The DoD RAB policy calls for existing TRCs or similar groups to be expanded or modified to become RABs rather than create a separate committee, as long as the RABs meet the statutory requirements for TRCs. RABs provide an expanded opportunity for ongoing community input and participation in all phases of installation restoration activities and decision-making.

The RAB is not a replacement for other types of community outreach and participation activities required by law, regulation, or policy. Therefore, all existing public involvement requirements must still be completed, including the community relations requirements of CERCLA as amended by the Superfund Amendments and Reauthorization Act (SARA); and public involvement requirements of the Resource Conservation and Recovery Act (RCRA), National Environmental Policy Act (NEPA), and any state environmental regulations.

Although the DoD installation has the lead responsibility for the formulation and implementation of the RABs, the state and EPA, as appropriate, should be involved in all phases of RAB planning and operation.

### **Preparing for the Initial RAB Information Meeting**

Before the initial RAB information meeting, the DoD installation should begin the process of informing and educating the community about the purpose of the RAB and opportunities for membership and participation. This is especially important at installations where a TRC has not been formed or where the community has had limited participation in the TRC. This can be accomplished by completing the following suggested activities.

#### Fact Sheet

The DoD installation should prepare and distribute a brief, one-page fact sheet describing the RAB prior to the initial RAB information meeting. This should be done in consultation with the existing TRC, the state, and EPA, as appropriate. It may be advisable to distribute the fact sheet using any existing public participation mailing lists unless a wider distribution is deemed desirable. The fact sheet should describe the purpose of the RAB, membership opportunities, the membership selection process, and state the responsibilities of RAB members. Copies of the fact sheet should be made available to the public in information repositories established by the installation and widely accessible to the community. If a significant segment of the community is non-English speaking or visually impaired, the fact sheet should be translated. A sample RAB fact sheet is included as Enclosure I.

#### Public Notice

A paid public notice should be issued to advertise the initial RAB information meeting in at least one newspaper of general circulation serving the affected communities around the installation, as well as in the installation newspaper. The public notice should be published in advance of the meeting and

include the following information:

- time and location of the meeting
- notice of the intent to establish a RAB or transition the TRC to become a RAB, if applicable
- RAB purpose
- membership opportunities
- meeting is open for public attendance and participation
- name and phone number of contact person(s) for more information
- topics for consideration at the initial RAB information meeting

The public notice should be placed in a prominent section of the newspaper likely to be read by the majority of community members. A sample public notice is included as Enclosure 2.

### Agenda

An agenda for the meeting should be developed by the DoD installation in consultation with the state and EPA, as appropriate. The agenda should reflect community restoration concerns as identified by existing community involvement activities (i.e., interview with key community leaders, review of correspondence, review of media coverage, etc.).

### Press Release

The DoD installation's public affairs office should prepare and distribute a press release to explain the purpose of the RAB and the time and location of the meeting. Depending on local media coverage of installation environmental issues, it may be appropriate to prepare a more extensive media packet of information to update the local media regarding installation restoration issues and activities.

### **Initial RAB Information Meeting**

The initial RAB information meeting should be sponsored by the DoD installation as soon as possible to ensure the expeditious execution of the RAB. This can be accomplished at the next regularly scheduled TRC meeting, as long as sufficient public notice is given, or at a community meeting held specifically for this purpose. Where a TRC currently exists, the TRC must evaluate its member composition and operation using the RAB criteria and modify, as appropriate. The DoD installation should consult with the state and the EPA, as appropriate, well in advance of the initial RAB information meeting on all matters related to the meeting.

The initial RAB information meeting may be facilitated by the DoD installation. If appropriate, the meeting could be facilitated by a professional facilitator with meeting facilitation skills and experience. A professional facilitator should be considered where a controversial situation is anticipated and a sense of independence will avoid, minimize, or even diffuse acrimonious deliberations.

The focus of the meeting should be to introduce the RAB concept to the community and begin the membership solicitation process. Some of the suggested topics to address include:

- overview and purpose of the RAB
- goal of representing diverse community interests
- difference between the RAB and the TRC
- membership opportunities

- member selection process and time table
- member responsibilities and what is expected of members
- overview of installation restoration and/or conversion activities and plans (as appropriate)
- open discussion/question and answer period
- co-chair opportunities
- potential conflict of interest concerns

The date and location of the meeting should be chosen with the goal of making it convenient for a majority of community members to attend and participate. The meeting, as with all RAB meetings, should be held in a central location. Input from the community should be strongly considered regarding convenient meeting locations and times. The DoD, the state, and EPA should ensure that a representative and/or designee is in attendance at all RAB meetings.

The DoD installation should prepare meeting minutes summarizing the topics discussed at the meeting. The minutes should be a concise summary of the meeting rather than verbatim transcripts. Translation of meeting minutes should be provided if a large segment of the local community speaks a language other than English or members of the community are visually impaired. The minutes should be made available to the public at the information repositories and/or other places within two weeks of the meeting. The DoD installation may want to consider mailing copies of the minutes to all community members who attended the meeting, existing TRC members and/or to people identified on the installation's community relations mailing list.

### **Converting a TRC to a RAB**

If an installation already has a functioning TRC, it should be converted into a RAB instead of establishing a separate committee. Some of the tasks that need to be done to accomplish the conversion are: adding a community co-chair; increasing community representation; and making all meetings open to the public. The ultimate goal of the RAB is to improve communications among stakeholders and solicit input to be used in the decision process.

As a part of the initial member selection process, the DoD installation, with input from the EPA, as appropriate, and the state, should evaluate diversity of the current membership of the TRC. DoD membership should consist of 1 to 2 members. As a general rule, TRC members should be given preference for a seat on the RAB to preserve continuity and the "institutional history" of the restoration process. This should be balanced against the preeminent need to form a RAB truly representative of the community's diverse interests.

### **Formulating the RAB**

#### Ensuring Membership Diversity and Balance

RAB members should be identified by a selection panel, see "Selecting Community Members." The RAB should be comprised of members from the local community and representatives from DoD, the state, and EPA, as appropriate. Community members selected for RAB membership should reflect the diverse interests within the local community. RAB members should live/work in the affected community or be impacted by the restoration program. The following list of potential interests should be considered for representation on the RAB. This list is illustrative and not all inclusive. Each RAB should be developed to reflect the unique mix of interests and concerns within the local community.

- local residents/community members (including minorities and low income)
- local reuse committees
- Technical Assistance Grant (TAG) recipient
- current TRC members
- local government officials/agencies
- business community
- school districts
- installation employees/residents
- local environmental groups/activists
- civic/public interest organizations
- religious community
- other regulatory agencies
- local homeowners organizations
- medical community
- Native American tribes

DoD, the state, and EPA, as appropriate, will generally have one member each on the RAB. While it is anticipated that other members of the installation and regulatory agencies will regularly attend and participate in RAB meetings as resources, the majority of RAB members should be from the local community.

#### Soliciting Community Members

For an effective RAB to be established quickly, the DoD installation, in coordination with the EPA, as appropriate, and the state, needs to inform and educate the local community about the formulation of the RAB, its purpose, and the opportunities for membership. The public outreach effort should be tailored to the individual community at each installation and may include letters to local government officials and community members. This is especially important at installations where there has been limited community involvement opportunities or where there has been minimal community and media interest in the installation.

Every effort should be made to ensure that all individuals or groups representing the community's interests are informed about the RAB and given the opportunity for RAB participation. Based on the results of member recruitment efforts, it may be necessary to directly solicit some groups or organizations. A sample RAB member recruiting letter is included as Enclosure 3 and may be useful in such efforts. For ease in tracking community interest, a community interest form, Enclosure 4, can be developed and distributed at the initial meeting, made available at local information repositories or other suitable locations, and mailed to persons who write or call.

#### Determining the Size of RAB

The initial size of the RAB will be determined by the RAB selection panel. Once the RAB is operational, procedures should be developed to address the addition and removal of RAB members. The RAB may want to re-evaluate the current RAB size, diversity and balance, and add members. To facilitate constructive dialogue, the RAB should generally be no larger than 20 individuals but no smaller than is necessary to adequately reflect the diversity of community interests regarding installation restoration. If RAB membership significantly exceeds 20, efforts should be made to consolidate and eliminate any duplicate representation of similar view points. If the RAB is larger than

20, the use of sub-committees should be considered.

#### Selecting RAB Members

The transition period between the meeting to initiate RAB formulation and the implementation of a fully functioning RAB will likely be a busy, challenging period. Although the length of time required to complete the transition to a RAB will vary from installation to installation, most RABs should set a goal to be in full operation within six months from the meeting to initiate RAB formulation. During this period of time the following key activities should be completed to ensure successful development and implementation of the RAB.

#### *Selecting Community Members:*

*Selection Panel.* The installation Commanding Officer (CO) in consultation with the state and EPA, as appropriate, should identify community interests and solicit names of individuals who can represent these interests on the selection panel. Once the selection panel nominees have been provided, the CO in consultation with the state and EPA, as appropriate, should review the selection panel nominations to ensure balance and diversity. If nominations represent the diversity of the community, they will become the selection panel. The panel should establish and announce the following items:

- procedures for nominating community RAB members
- process for reviewing community interest forms
- criteria for selecting community RAB members
- list of RAB nominees

*Final Selection:* RAB membership selection should be in an open and fair manner using the panel. The panel will evaluate interest forms and develop a nomination list for the CO. The CO, in consultation with the state and EPA, as appropriate, should review the list to ensure that nominees represent the diversity of the community. If the list lacks diversity, the CO will ask the selection panel to provide a revised list. A lack of diversity or balance is the only reason a list can be rejected.

The selection panel may want to contact those who expressed interest but not selected for RAB membership to thank them for their interest and willingness to participate in the RAB. A letter to them should explain selection criteria, why they were not chosen and should encourage them to attend and participate at the RAB meetings as members of the general public. Their interest forms should be kept on file for consideration when future membership openings occur.

Additions to and removals from the RAB can be made at any time the RAB deems necessary. Procedures for additions and resignations should be outlined in the operating procedures.

*NOTE:* DOD contractor personnel should not be RAB members. However, for community RAB members who have business interests, membership on the RAB should not limit ability to compete for contracts. All information provided the RAB members should also be made available to the general public. Appropriate assurances should be made to avoid conflicts of interest.

#### *Selecting Government Members:*

The DoD installation, state and local governments, and EPA, as appropriate, should be represented on the RAB. Members may include the Remedial Project Manager (RPM) from the service, state, and

EPA, as appropriate, and representatives from local agencies. Representatives should dedicate the time necessary and have sufficient authority to fulfill RAB responsibilities. Whenever, possible, each entity should be represented by one individual. Other government officials such as public health officials from the Agency for Toxic Substances and Disease Registry (ATSDR) may attend RAB meetings as their expertise may be needed.

In the case of closing military installations, the Base Realignment and Closure (BRAC) Cleanup Team (BCT) will be a member of the RAB. The BCT consists of representatives from the DoD service, EPA, and the state.

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### III. RAB OPERATIONS

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This section presents some important issues related to RAB operations. Once the RAB is officially formed, the RAB should develop and implement its operating procedures.

#### Selecting Co-Chairs

Co-chairs' responsibilities should be jointly held between the installation and community and they will serve as equal partners. Selection of the DoD installation co-chair is by the installation's CO. The community co-chair should be selected by the community members of the RAB. The co-chairs should have sufficient authority and ability to fully undertake RAB chairperson responsibilities.

The length of the term to be served by the co-chairs should be decided upon by the RAB and outlined in the RAB's operating procedures, one- or two-year terms should be considered. This will allow for continuity, but also timely change if necessary. Co-chair termination procedures should be articulated in the RAB's operating procedures.

#### Distributing a Fact Sheet

After the RAB is established, the RAB should consider preparing and distributing another brief fact sheet to announce that the RAB has been formed and publish the names of RAB members. The fact sheet could also announce the RAB meeting schedule, publicly thank all community members who expressed interest in RAB participation, and encourage ongoing community attendance and participation at future RAB meetings.

#### Developing a RAB Mission Statement

Each RAB should develop a mission statement that articulates the overall purpose of the RAB. The statement can be brief. For example, "The RAB mission should be to establish and maintain a forum with all stakeholders for the exchange of information in an open and interactive dialogue concerning the installation's restoration program."

#### Developing RAB Operating Procedures

The RAB should develop a set of operating procedures. The operating procedures should include policies on attendance, meeting frequency, procedures for removing, replacing co-chairs and replacing/adding other members, membership and co-chair length of service, methods for resolving member disputes, process for reviewing and responding to public comments, and procedures for public participation.

#### Training for RAB Community Members

Once selected, RAB members may need some initial orientation to enable them to perform their duties. The DoD installation should work with the state, EPA and environmental groups to develop methods to quickly inform and educate the RAB members to promote the rapid formation of a fully functioning RAB. This may be accomplished at initial RAB meetings or at special orientation sessions

and may include the following:

- formal training sessions
- workshops
- informal briefings
- briefing booklets, past fact sheets, maps
- site tours

Technical support staff from state, federal, and local agencies that have involvement with restoration and reuse issues may be asked to attend RAB meetings to provide information in their areas of expertise and will be available to provide information and explanation to RAB members.

#### **Providing Administrative Support to the RAB**

The DoD installation needs to ensure that adequate administrative support is made available to establish and operate the RAB. It is especially important to provide for ongoing administrative support for closing or closed installations. Administrative support will usually include the following:

- meeting facilities
- preparation of meeting minutes and other routine word processing tasks
- copying/printing of RAB documents, notices, fact sheets
- conduct mailings
- distribution of public notices in local newspapers
- management of RAB mailing lists
- translation and distribution of outreach and other RAB materials
- meeting facilitation

#### **Funding for RABs**

Administrative and logistical support to meet the RAB's mission should be provided by the DOD installation, using the Defense Environmental Restoration Account at non-BRAC installations, and BRAC funds at closing installations.

#### Technical Assistance

Community members of the RAB at NPL installations may establish an organization and apply for a Technical Assistance Grant from EPA, provided that a TAG has not already been awarded to another community group at the installation.

#### **Scheduling Meetings**

RAB meetings should be scheduled on a regular basis. The individual RAB members should decide the scheduling and frequency of RAB meetings. The frequency of RAB meetings should be to ensure timely and effective communication. Closing installations may require more frequent meetings.

#### Location

The RAB meetings should be held in a location agreed upon by the RAB members and in a location that is accessible to the physically impaired. The development of the RAB concept was meant to



ensure and enhance community involvement in the process; providing the community with the opportunity to suggest meeting locations should assure this.

#### Special Focus Meetings

When necessary, the RAB may meet for special focus meetings. These are meetings where a single topic or specific document may be reviewed, discussed, and commented on. This may occur when the RAB determines the need for input on specific issues in order to move ahead or the co-chairs agree that a special meeting is necessary.

#### **Attending Meetings**

Ongoing and consistent involvement of all board members is essential to the success of the RAB. Regular attendance by all members or designated alternates is expected. Early in the process, the group should jointly establish groundrules for participation, including meeting attendance. Representatives from the DoD, environmental regulatory agencies, and the community should attend all RAB meetings. This will aid in the operation of the RAB as a team.

If after selection, a RAB member is unable to fully participate, the RAB, using pre-established rules, should ask the member to submit his/her resignation in writing to either of the RAB co-chairpersons. Procedures for replacing/adding members should be decided by the RAB.

#### **Conducting the Meeting**

Each meeting should have a purpose and an agenda. Because these meetings are open to the public, a translator should be provided where a large portion of the community is non-English speaking or hearing impaired. If the RAB deems that an outside facilitator is necessary, arrangements should be made accordingly.

#### Nature of Discussions

DOD will consider all advice provided by the RAB whether consensus in nature or provided on an individual basis, including advice given that represents the minority view of members. However, because DOD does not intend for Federal Advisory Committee Act (FACA) requirements to apply to RABs, consensus is not a prerequisite for RAB recommendations. Each individual should provide advice as an individual, not as a group. At the same time, while consensus is not required or asked of the board members, in the natural course of discussions consensus may evolve.

#### Format

The meeting format of the RAB will vary. The format will be dictated by the needs of the RAB. Generally, a basic format should include:

- review of "old" business
- presentation or update by project technical staff and RAB member discussions
- question/answer/input/discussion period for non-RAB community participants
- list of action items for the RAB members
- discussion of the next meeting's agenda

Meeting Minutes

The RAB should prepare meeting minutes summarizing the topics discussed at RAB meetings. The minutes should be concise summaries of RAB meetings rather than verbatim transcripts to facilitate effective communication with the local communities. Before copies of the meeting minutes are distributed to existing members of the RAB and made available for public review, the co-chairs should review and approve them. These minutes should be made available to the public within two weeks of the meeting. A public notice should be prepared to announce the availability of the meeting minutes and the next meeting. The DoD installation may want to consider mailing copies of the minutes to all community members who attend the RAB meetings and to those on the community relations mailing list.

The meeting minutes should be translated if a large segment of the local community speaks a language other than English or members of the community are visually impaired. The DoD installation is responsible for distributing copies of the meeting minutes and all documents to the RAB for review and comment and that this same information is consistently available for public review in the information repositories.

Responding to Comments

The RAB should regularly review, discuss, and provide comments on a wide variety of technical documents and plans. This information should simultaneously be made available for public review and comments at the local information repositories. Public comments should be seriously considered before these documents or plans are finalized.

Public Comment Periods Required by Regulation

The DoD installation should solicit and respond to comments from the public as specified in applicable regulations. In some cases, e.g. RCRA, the regulatory agency is required to obtain public input on corrective actions. Accordingly, it may not be necessary for the DOD installation to seek public comment.

The public is the community at large, not only the RAB.

Other Comments

As a general rule, all draft and final documents deliverable to regulators should be distributed to the RAB and the public for review and comment when they are given to the regulators and should be made available for at least 30 days for review. For documents where a review period shorter than 30 days applies to regulatory staff, this same shorter review period would also apply to the review by the RAB and community members. Every effort should be made to provide the RAB and community members with an adequate review period based on the length and complexity of the document. Where necessary, special focus meetings of the RAB may be called to review and comment on key documents.

To demonstrate commitment to meaningful consideration of comments, the DoD installation should prepare formal written responses to all substantive comments received from the RAB and the general public. In some cases, RAB meeting minutes may suffice to document responses to specific comments.

Addressing Non-restoration Issues

Because RABs provides a direct channel for communication to the installation, community members may raise some non-restoration issues during RAB discussions. Although these issues may not be appropriate for discussion within the context of the RAB, DOD should be responsive to these concerns by referring them to the appropriate offices at the installation or to alternative forums more appropriate for the issue (i.e., at closing installations, non-restoration issues should be referred to the local Reuse Committee, the Base Transition Coordinator, or the BRAC Cleanup Team).

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## IV. ROLES AND RESPONSIBILITIES

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### Department of Defense Installation Co-Chair

1. The DoD installation co-chair should coordinate with the community co-chair to prepare and distribute an agenda prior to each RAB meeting. If the RAB will address restoration related to base closure activities, the DoD and community co-chair should coordinate with the BRAC Cleanup Team, the Base Transition Coordinator, and the reuse committee.
2. The DoD installation co-chair should ensure that DoD participates in an open and constructive manner.
3. The DoD installation co-chair should attend all meetings and ensure that the RAB has the opportunity to participate in the restoration decision process.
4. The DoD installation co-chair should ensure that community issues and concerns related to restoration are addressed when raised.
5. The DoD installation co-chair should ensure documents distributed to the RAB are also made available to the general public.
6. The DoD installation co-chair with assistance from the RAB should ensure that an accurate list of interested/affected parties is developed and maintained.
7. The DoD installation co-chair should provide relevant policies and guidance documents to the RAB in order to enhance the RAB's operation.
8. The DoD installation co-chair should ensure that adequate administrative support to the RAB is provided.
9. The DoD installation co-chair should refer issues not related to restoration to appropriate installation official for them to address.
10. The DoD installation co-chair should report back to the installation.

### Community Co-Chair

1. The community co-chair should coordinate with the DoD installation co-chair and RAB community members to prepare an agenda prior to each RAB meeting.
2. The community co-chair should ensure that community members participate in an open and constructive manner.
3. The community co-chair should ensure that community issues and concerns related to restoration are raised.
4. The community co-chair should assist with the dissemination of information to the general public.
5. The community co-chair should report back to the community.
6. The community co-chair is expected to serve without compensation.

### RAB Community Members

1. The RAB community members are expected to attend meetings.
2. The RAB community members are expected to provide advice and comment on restoration issues to the decision makers.
3. The RAB community members should represent and communicate community interests and concerns to the RAB.

4. The RAB community members should act as a conduit for the exchange of information between the community, DoD installation, and environmental oversight agencies regarding the installation's restoration and reuse programs.
5. The RAB community members should review, evaluate, and comment on documents and other such materials related to installation restoration and closure, where applicable.
6. The RAB community members are expected to serve without compensation on the RAB.

**State Regulatory Agency Member**

1. The state member should attend RAB meetings.
2. The state member should serve as an information, referral and resource bank for communities, installations and agencies regarding installation restoration.
3. The state member should review documents and other materials related to restoration.
4. The state member should ensure that state environmental standards and regulations are identified and addressed by the DoD installation.
5. The state member should facilitate flexible and innovative resolutions of environmental issues and concerns.
6. The state member should assist in education and training for the RAB members.

**U.S. Environmental Protection Agency (EPA) Member**

1. The EPA member should attend RAB meetings.
2. The EPA member should serve as an information, referral and resource bank for communities, installations and agencies regarding installation restoration.
3. The EPA member should facilitate flexible and innovative resolutions of environmental issues and concerns.
4. The EPA member should ensure that federal environmental standards and regulations are identified and addressed by the DoD installation.
5. The EPA member should assist in education and training for the RAB members.

**BRAC Cleanup Team (BCT) at Closing Installations**

1. The BCT should maintain a close working relationship with other members of the RAB.
2. The BCT should provide timely and accurate information to the RAB.

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# ENCLOSURES

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## Enclosure (1) Sample RAB Fact Sheet

### RESTORATION ADVISORY BOARD (RAB)

*(name and location of installation)*

*(add site-specific logo if available)*

#### Background

At *(name of installation)* the *(name of service)* will be pursuing installation restoration activities as part of the Department of Defense's Installation Restoration Program (IRP). *(Provide a brief description of the restoration activities projected at the installation.)*

#### What is a RAB?

The RAB is an advisory body designed to act as a focal point for the exchange of information between *(name of installation)* and the local community regarding restoration activities. The RAB is intended to bring together community members who reflect the diverse interests within the local community, enabling the early and continued two-way flow of information, concerns, values, and needs between the affected community and the installation.

RAB members will be asked to meet regularly and review and comment on technical documents and plans relating to the ongoing environmental studies and restoration activities at *(name of installation)*. Members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Membership terms will be decided by the RAB. All RAB meetings will be open to the public. Technical support staff will be available to provide informational support and explanation to RAB members.

#### How to Become a RAB Member

Community members interested in finding out more about the RAB are invited and encouraged to attend a community meeting that *(name of installation)* will conduct on *(date and time)*. At the meeting, you will learn about the purpose of the RAB, membership opportunities and responsibilities, and hear an update on the status of installation restoration activities and future plans. RAB membership applications will be available at the community meeting. The community meeting will be held at the following address:

*(List location, address, date, and time of meeting)*

If you have questions about the RAB or are interested in applying for RAB membership, community interest forms may also be obtained by contacting:

*(List name, title, address, and telephone number of contact)*

All Community Interest Forms must be received by *(deadline for forms)*. Forms will be reviewed and approved by the selection panel. The selection panel is organized by the Commanding Officer of *(name of installation)*. The selection panel members are representatives from the DoD installation, state, community and EPA, as appropriate.

#### Community Expectations

Community members are expected to serve as volunteers on RABs to provide advice to the decision makers about restoration plans for the *(name of installation)*.

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## Enclosure (2) Sample RAB Public Notice

### PUBLIC NOTICE

*(name of installation)*

#### Formation of Restoration Advisory Board

#### Membership Solicitation

The Department of Defense recognizes the importance of stakeholder participation for Installation Restoration Programs (IRP). Therefore, *(name of installation)* is announcing the establishment of a Restoration Advisory Board (RAB). The RAB is intended to improve public participation by involving the community in the restoration decision-making process.

The existing Technical Review Committee (TRC) will be modified to become a RAB. The RAB will include community members who reflect the diverse interests of the local community. RAB members will be asked to review and comment on plans and activities relating to the ongoing environmental studies and restoration activities at *(name of installation)*. RAB members will have the opportunity to provide input on activities that will accelerate the restoration. Members will also be expected to serve as a voluntary liaison between the community and the RAB and be available to meet with community members and/or groups. RAB meetings will be open to the public.

Community interest forms can be obtained by contacting:

*(List name, title, address, and telephone number of contact[s])*

Members will be expected to serve a one- to two-year term and attend RAB meetings regularly. Forms will be reviewed and approved by the selection panel. The selection panel members will be representatives from the *(name of installation)*, *(name of state environmental agency)*, the community, and the U.S. Environmental Protection Agency, as appropriate. To qualify, interested parties must be local residents of *(name of cities or counties)* that are impacted/affected by *(name of installation)*.

The initial RAB information meeting will be held:

*(list location, date, and time of meeting)*

For additional information, please contact *(name, address, and telephone number of contact)*.

## Enclosure (3) Sample RAB Recruiting Letter

(Issued by Selection Panel)

### RESTORATION ADVISORY BOARD FORMATION

Dear *(name of community member)*:

The Department of Defense recognizes the importance of stakeholder participation in our Installation Restoration Programs (IRP). Therefore, *(name of installation)* is announcing the establishment of a Restoration Advisory Board (RAB). The RAB is intended to improve public participation by involving the community in the restoration decision-making process.

The RAB will include community volunteer members who reflect the diverse interests of the local community. RAB members will have an opportunity to provide input on installation restoration activities. RAB community members can expect to spend *(number of hours/days)* per year supporting the RAB.

RAB members will be asked to meet regularly and review and comment on plans and activities relating to the ongoing environmental studies and restoration activities at *(name of installation)*. RAB members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Members will be expected to serve a term. All RAB meetings will be open to the public.

If you are interested in participating on the RAB for *(name of installation)*, please complete the enclosed Community Interest Form and return it to the following address not later than *(deadline for applications)*:

*(List name, address, and telephone number of contact)*

Forms will be reviewed by a panel comprised of representatives from the community. The panel will nominate a list of community members for the RAB to the *(name of installation)* and appropriate regulatory agencies.

Sincerely,

*(name of selection panel member)*

Enclosure

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## Enclosure (4) Sample RAB Community Interest Form



COMMUNITY INTEREST FORM FOR  
(NAME OF INSTALLATION) RESTORATION ADVISORY BOARD

Conditions for Membership:

Restoration Advisory Board (RAB) members are volunteering to serve a term and attend all RAB meetings. Duties and responsibilities will include reviewing and commenting on plans and activities associated with the Installation Restoration Program at *(name of installation)*. Technical experts will be made available to the RAB. Members will be expected to be available to community members and groups to facilitate the exchange of information and/or concerns between the community and the RAB. RAB community members can expect to devote approximately *(number of hours/days)* per year to support the RAB.

Priority for RAB membership will be given to local residents that are impacted/affected by the *(name of installation)*.

Name:

Address:

Street

Apt.#

City

State

Zip

Phone:

Daytime Home Fax

1. (OPTIONAL) Are you affiliated with any group related to restoration or base closure activities? If yes, list the group and your position, if applicable.
2. Briefly state why you would like to participate on the RAB.
3. What has been your experience working as a member of a diverse group with common goals?
4. The community co-chairperson will be selected by community members of the RAB. Please indicate if you are interested in being considered for the community co-chairperson position on the RAB.

Yes, I would like to be considered.

5. Are you willing to voluntarily serve on the RAB?

Yes, I am willing to serve.

6. By submitting this form, you are aware of the time commitment which this appointment will require of you.

**PRIVACY ACT STATEMENT:** The personal information requested on this form is being collected in order to determine interest in and qualification for membership on the Restoration Advisory Board. The information will be reviewed by a selection panel and will be retained in a file at (*name of installation*). The information will not be disseminated. Providing information on this form is voluntary.

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APPENDIX B

(to Kelly AFB Restoration Advisory Board Charter)

U.S. Department of Defense  
Proposed Rule for Restoration Advisory Boards  
(published in the Federal Register August 6, 1996)

**DEPARTMENT OF DEFENSE**

Office of the Secretary

32 CFR Part 202

RIN 0790-AG31

Restoration Advisory Boards (RABs)

AGENCY: Department of Defense, Office  
of the Assistant Deputy Under Secretary  
of Defense (Environmental Cleanup),  
DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense  
(DoD) proposes and requests public  
comments on regulations regarding the  
characteristics, composition, funding,  
and establishment of Restoration  
Advisory Boards (RABs). DoD has  
proposed these regulations in response  
to section 324 of the National Defense

Authorization Act for Fiscal Year 1996 (Pub. L. 104-106) that amended section 2705 of title 10, United States Code, and requires the Secretary of Defense to prescribe regulations regarding RABs.

The purpose of a RAB is to facilitate public participation in DoD environmental restoration activities at operating and closing DoD installations where local communities express interest in the program. The proposed regulations are based on DoD's current policies for establishing and operating RABs as well as DoD's experience in establishing RABs over the past two years.

**DATES:** Comments on this proposed rule must be submitted on or before November 4, 1996.

**ADDRESSES:** Comments on this proposal should be sent to the following address: Office of the Assistant Deputy Under Secretary of the Defense (Environmental Cleanup), 3400 Defense Pentagon, Washington, DC 20301-3400. The public must send a written original, two copies, and whenever possible, a 3.5 inch computer disk containing comments in a common word processing format such as WordPerfect version 5.1. This will expedite DoD's response to comments and reduce the associated costs.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marcia Read, Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup), (703) 697-9793.

**SUPPLEMENTARY INFORMATION:**

Preamble Outline

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  - B. Operating Requirements
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- IV. Section by Section Analysis of the Proposed Rule
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V. Regulatory Analysis

- A. Regulatory Impact Analysis Pursuant to Executive Order 12866
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- VI. Unfunded Mandates

I. Authority

These regulations are proposed under the authority of section 2705 of title 10, United States Code, that was amended by section 324 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106).

II. Background

The Defense Environmental Restoration Program (DERP) was established in 1984 to promote and coordinate efforts for the evaluation and cleanup of environmental contamination at operating and closing DoD installations and formerly used defense sites (FUDS). Policy direction and oversight of DERP is the responsibility of the Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup). The DoD Components (Departments of Army, Navy, and Air Force, and the Defense Agencies) are responsible for program implementation.

DoD recognizes the importance of public involvement at military installations and FUDS that require environmental restoration. DoD has developed policies to ensure that local communities are provided the opportunity as early as possible to obtain information about and provide input to the decisions regarding the environmental restoration activities at military installations. It is DoD policy to provide such opportunity through the establishment of RABs.

DoD, as with all federal agencies, must comply with the statutory and regulatory requirements for community involvement found under the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Pub. L. 96-510) as

amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499), the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-550), National Environmental Policy Act (NEPA) (Pub. L. 91-190), and other applicable federal, state and local environmental laws and regulations. Section 211 of SARA (10 USC 2705(c)) and Executive Order 12580, entitled "Superfund Implementation," require DoD, where possible and practical, to establish technical review committees (TRC) for reviewing technical documents and discussing progress in implementing and completing restoration activities.

Over the past several years, DoD has participated as a member of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). The FFERDC is a committee chartered under the Federal Advisory Committee (FACA). The committee includes stakeholders—representatives of federal, state, tribal, and local agencies, and of environmental, community, labor, and environmental justice organizations. The FFERDC develops consensus policy recommendations for improving decisions about environmental restoration at federal facilities. In February 1993, the FFERDC issued the "Interim Report of the FFERDC: Recommendations for Improving the Federal Facilities Environmental Restoration Decision-Making and Priority-Setting Processes". In that report, the FFERDC recommended that: (1) Federal agencies should be more proactive in providing information about restoration activities to stakeholders, and (2) citizen advisory boards should be established to provide advice to government agencies that conduct and regulate restoration at federal facilities. DoD carefully considered the recommendations of the FFERDC and, in response, strengthened its community involvement efforts including the RAB initiative under its environmental restoration program.

Following the release of the FFERDC Interim Report in 1993, the FFERDC expanded its membership to include representatives from the military services, local governments, and environmental justice organizations. In April 1996, the FFERDC issued its Final Report which includes chapters on community involvement and advisory boards. The Final Report affirms the value of RABs as a method for involving the public in the environmental restoration decision-making process and provides recommendations for establishing and implementing successful RABs.

In 1993, President Clinton announced a five-part plan to speed the economic recovery of communities in which bases are scheduled to close. Part of the Fast-Track Cleanup Program, which sprang from the President's plan, emphasized the early community involvement in the environmental restoration process as an important element of the program. On September 9, 1993, the Deputy Secretary of Defense issued a memorandum that outlined the policies for implementation of the Fast-Track Cleanup Program. One of the guidances called for the establishment of RABs at closing installations where property was available for transfer to communities for reuse. The RAB initiative, subsequently applied to operational installations, gives an opportunity for citizens living near military installations to obtain information about, and provide input to, the environmental restoration program.

DoD believes that working in partnership with local communities and addressing the concerns of those communities early in the restoration process will enhance its efforts under, and increase credibility of, the environmental restoration program. DoD remains committed to involving communities neighboring its installations in environmental restoration decisions that may affect human health and the environment. RABs have become a significant component of DoD's efforts to increase community involvement in DoD's environmental restoration program. RABs continuously provide a forum through which members of affected communities can provide input to an installation's ongoing environmental restoration activities.

On September 27, 1994, DoD and EPA jointly issued guidelines for the formation and operation of RABs ("Restoration Advisory Board Implementation Guidelines"). The guidelines describe how to implement the DoD RAB policy and identify the role each stakeholder can play in the RAB. The guidelines also state that existing TRCs or similar groups may be expanded or modified to become RABs rather than an installation creating a separate committee because RABs are designed to fulfill the statutory requirements for TRCs.

As of September 30, 1995, more than 200 RABs had been formed at more than 230 operating and closing installations that have restoration programs. It is important to note that the RAB is not a replacement for other types of community outreach and participation activities required by law, regulation, or policy.

In section 326(a) of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337, October 5, 1994), Congress directed that section 2705 of title 10, United States Code (CERCLA), be amended in the following manner, ("1) In lieu of establishing a technical review committee under subsection (c), the Secretary may permit establishment of a restoration advisory board in connection with any installation (or group of nearby installations) where the Secretary is planning or implementing environmental restoration activities." Thus, Congress granted DoD the authority to establish RABs instead of TRCs at installations undergoing environmental restoration.

On February 10, 1996, the President signed into law the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106) which contained several provisions addressing the establishment and operation of RABs. Section 324(a) of Pub. L. 104-106 amended section 2705 of title 10, United States Code, requiring the Secretary of Defense to "prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards" (amended section 2705(d)(2)(A)). Section 324(a) of Pub. L. 104-106 also stated that DoD's issuance of regulations shall not be a precondition to the establishment of RABs (amended section 2705(d)(2)(B)). Section 324(b) of Pub. L. 104-106 authorized DoD to enable the installation to pay for routine administrative expenses of a RAB, as well as allowing RABs or TRCs to obtain technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted at the installation using DERP and Base Realignment and Closure (BRAC) funding (amended sections 2705(d)(3), (e), and (g)). However, section 324(d) of Pub. L. 104-106 stated that funding for both administrative expenses and technical assistance may not be made after September 15, 1996, unless the Secretary publishes proposed final or interim final regulations for RABs (amended section 2705(g)(2)(B)).

Therefore, DoD proposes these regulations regarding the characteristics, composition, funding, and establishment of RABs. DoD recognizes that each RAB established will be a unique organization dealing with installation-specific issues. This proposal, developed consistent with the recommendations set forth in the FFERDC's Final Report, is consistent

with existing DoD and EPA policy on RABs, and reflects over two years of experience in establishing and operating RABs throughout the United States. DoD has structured this proposal to maximize flexibility for RAB members and installations nationwide.

### III. Summary of the Proposed Rule

DoD is proposing and requesting public comment on regulations regarding the establishment, characteristics, composition, and funding of RABs. This section of the preamble provides a summary of the proposed regulations in 32 CFR part 202.

#### A. General Requirements

In this section of the proposed rule, DoD discusses the purpose, scope, and applicability of the proposed regulations for RABs. DoD is required by revised section 2705(d)(2)(A) of title 10, United States Code, to issue regulations concerning the establishment, characteristics, composition, and funding of RABs. When issued as a final rule, the regulations will apply to all RABs regardless of when they were established.

In this proposal, DoD defines the purpose of a RAB as providing an expanded opportunity for stakeholder input into the environmental restoration process at operating and closing DoD installations. While a RAB will complement other community involvement efforts undertaken by the installation concerning environmental restoration, DoD that a RAB does not replace other types of community outreach and participation activities required by applicable federal and state laws.

DoD will require that a RAB be established at an installation when there is sufficient and sustained community interest and any of four specified criteria are met. The installation shall have the lead responsibility for forming and operating a RAB. Further, DoD proposes five minimum steps that the installation should take to determine if sufficient and sustained community interest exists in forming a RAB.

Prior to establishing a RAB, DoD is proposing that the installation should notify potential stakeholders of its intent to form a RAB. Stakeholders are defined as all parties that are actually or potentially affected by restoration activities at an installation. At closing installations, stakeholders should include members of the Local Redevelopment Authorities (LRA). The notification should describe the purpose of a RAB and discuss opportunities for membership.

This proposed rule contains guidelines regarding the composition of RABs. DoD proposes that each RAB should consist of representatives from DoD, EPA, state and local government, and members of the community. DoD notes in the preamble (see section IV, A.4.a) that EPA's involvement on a RAB is discretionary depending on whether the installation is included on the National Priorities List (NPL) set forth in Title 40 Code of Federal Regulations part 300, appendix B. At closing installations, members of the BRAC Cleanup Team (BCT) may serve on the RAB as DoD, EPA, or state representatives.

DoD is not proposing regulations for specific roles and responsibilities of RAB members, but is stating that the chairmanship of a RAB must be shared between the installation and community. In addition, DoD proposes that community members of a RAB shall not be compensated by DoD for their participation.

#### B. Operating Requirements

In this section of the proposed rule, DoD sets forth basic requirements for the operation of a RAB. DoD proposes that each RAB should develop a mission statement that describes its overall purpose and goals. DoD also specifies certain requirements regarding the selection process for co-chairs. DoD proposes that the installation's co-chair shall be determined by the installation's Commanding Officer (CO) or other DoD decision authority in accordance with military service-specific guidance. DoD is not specifying any required procedures for selection of the community co-chair or for community members of the RAB in general, only that the community members of the RAB will be responsible for selecting their co-chair.

DoD proposes that each RAB should develop a set of operating procedures. These procedures may address: Announcing meetings; attendance of members at meetings; frequency of meetings; addition or removal of RAB members; length of service for RAB members and co-chairs; methods for dispute resolution; review of responses to public comments; participation of the general public in RAB operations; and keeping the public informed about RAB proceedings.

DoD is not proposing specific requirements concerning the conduct of RAB meetings, because the meeting format of each RAB will vary and be dictated by the needs of the participants. However, DoD proposes that the installation should prepare meeting minutes summarizing the

topics discussed at RAB meetings, and make them available in information repositories.

#### C. Administrative Support, Funding, and Reporting Requirements

In this section of the proposed rule, DoD sets forth requirements regarding administrative support for establishing and operating a RAB, funding for administrative support, and reporting requirements regarding the activities and administrative expenses associated with RABs. This section also references impending regulations governing how community members of RABs and TRCs may seek funding for obtaining technical assistance to interpret scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted at the installation.

Section 324 of Pub. L. 104-106 amended section 2705(d)(3), title 10, United States Code, authorizes the CO of an installation, or if there is no such commander, an appropriate DoD official, to pay for routine administrative expenses of a RAB established at an installation. To implement this provision, this proposed rule requires that the installation provide administrative support to establish and operate a RAB, subject to the availability of funds. The scope of this support corresponds to those activities that are eligible for DoD funding including:

- Establishing a RAB.
- Membership selection.
- Certain types of training.
- Meeting announcements.
- Meeting facility.
- Meeting facilitators, including translators.
- Preparation of meeting materials and minutes.
- Maintenance of a RAB mailing list and mailing of RAB materials.

Section 324(d) of Pub. L. 104-106 amended section 2705(g) title 10, United States Code, prescribes the level and allocation of funds earmarked for RAB administrative expenses. Accordingly, the proposed rule establishes these requirements and specifies that operating installations should pay for RAB administrative expenses using funds from their Component's Defense Environmental Restoration Account (DERA). At closing installations, DoD proposes that installations use BRAC funds to pay for eligible RAB administrative expenses.

Section 324(c) of Pub. L. 104-106 revised section 2705(e), title 10, United States Code, enables community

members of a RAB or TRC to request DoD to obtain from the private sector, technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted at the installation.

Later this year, DoD will issue a rule addressing policies and procedures for obtaining technical assistance under section 2705(e). In this proposed rule, DoD states that community members of a RAB or TRC seeking technical assistance in interpreting information with regard to the restoration activities at an installation may obtain a grant through such programs as EPA's Technical Assistance Grant (TAG) program or Technical Outreach Services to Communities (TOSC) program. Upon DoD's promulgation of regulations implementing section 2705(e), Technical Assistance for Public Participation (TAPP), community members of a RAB or TRC may request the installation CO, or appropriate DoD official, to obtain from private sector sources technical assistance.

Section 324(f) of Pub. L. 104-106 amends section 2706(a)(2) of title 10, United States Code, by adding subsection (j) requiring DoD to report to Congress on the activities of TRCs and RABs. In order to fulfill this requirement, this proposed rule requires that the installation at which a RAB has been established document the activities of the RAB and track expenditures for administrative expenses of the RAB. This proposed rule does not prescribe specific procedures for the installation to follow as part of DoD's collecting this information when reporting to Congress. Rather, DoD will rely on existing internal reporting mechanisms within the Department and services to collect this information.

#### IV. Section-by-Section Analysis of the Proposed Rule

This section of the preamble presents an analysis of each section of the proposed rule.

##### A. General Requirements

##### 1. Purpose, Scope, and Applicability

a. *Purpose and scope of responsibilities of a RAB.* To define the duties and responsibilities of a RAB, DoD is proposing that the purpose of a RAB is to provide an expanded opportunity for stakeholder input into the environmental restoration process at DoD installations. DoD considers stakeholders as parties that are actually or potentially affected by restoration

activities at an installation. At closing installations, the LRA, as defined under BRAC, are included as stakeholders.

This proposed rule does not list specific responsibilities of a RAB, but DoD considers the following types of activities within the scope of a RAB:

- Providing advice to the installation, EPA, state regulatory agency, and other government agencies on restoration activities and community involvement.
- Addressing important issues related to restoration, such as the scope of studies, cleanup levels, waste management, and remedial action alternatives.

- Reviewing and evaluating documents associated with restoration activities, such as plans and technical reports.

- Identifying restoration projects to be accomplished in the next fiscal year and beyond.

- Recommending priorities among sites or projects.

- Conducting regular meetings that are open to the public and scheduled at convenient times and locations.

- Interacting with the LRA or other land use planning bodies to discuss future land use issues relevant to environmental restoration decision-making.

By establishing a RAB, DoD hopes to ensure that interested stakeholders have a voice and can actively participate in a timely and thorough manner in the planning and implementation of the environmental restoration. A RAB will serve as a forum for the expression and careful consideration of diverse points of view.

While a RAB complements other community involvement efforts at DoD installations, DoD notes in the proposed rule that a RAB does not replace other types of community outreach and participation activities required by law, regulation, or policy. DoD installations will continue to be responsible for fulfilling all legally mandated public involvement requirements, such as those required under CERCLA, RCRA, NEPA, and applicable state environmental regulations.

b. *Applicability of regulations to existing RABs.* As directed by section 2705(d)(2)(A) of title 10, United States Code, DoD must prescribe regulations regarding the establishment, characteristics, composition, and funding of RABs. DoD intends that the final regulations will apply to all RABs, including RABs established prior to the effective date of the final rule. DoD does not consider that applying final regulations to RABs already established will pose any additional requirements or conflict, because the proposed

regulations are based on existing DoD policy that has been implemented since September 1994.

## 2. Criteria for Establishment

a. *Determining If Sufficient Interest Warrants Establishing a RAB.* In this rule, RABs may only be established at operating or closing installations undergoing environmental restoration. In accordance with existing policy, DoD proposes that a RAB be established when there is sufficient and sustained community interest and any of the following criteria are met:

- The closure of an installation involves the transfer of property to the community.
- At least 50 local citizens petition for an advisory board.
- Federal, state, or local government representatives request formation of an advisory board, or
- The installation determines the need for an advisory board.

To clarify how an installation will determine the need for an advisory board, DoD proposes that the installation determine the level of interest within the community for establishing a RAB by:

- Reviewing correspondence files.
- Reviewing media coverage.
- Consulting community members.
- Consulting relevant government officials, and
- Evaluating responses to notices placed in local newspapers.

At the majority of installations that have an environmental restoration program, DoD expects that local communities will be interested in forming a RAB. If, however, outreach efforts reveal no interest within the community, a description of those efforts taken, a summary of the results, and plans for future efforts, must be documented as part of the installation's community relations plan (CRP). Under CERCLA (see 40 CFR 300.430(c)), an installation must prepare a formal CRP based on community interviews and other relevant information. The CRP specifies the community relations activities the installation expects to undertake during the restoration process.

DoD notes that installation efforts to identify the level of community interest in establishing a RAB should not be limited to a one-time assessment of the criteria discussed above. Although DoD is not proposing a specific requirement, DoD recommends that the installation reassess current community interest in the restoration program as part of the periodic update of its CRP.

b. *Responsibility for forming and operating a RAB.* Once the installation

determines that a RAB must be established, DoD proposes that the installation have the lead responsibility for forming and operating the RAB. The installation should have lead responsibility because the RAB will be an integral part of the installation's community involvement and outreach programs. DoD recommends that installations involve, as appropriate, EPA, state, and local government in all phases of RAB planning and operation.

c. *Converting existing Technical Review Committees (TRCs) to RABs.* TRCs were established at more than 200 DoD installations to provide interested parties with a forum to discuss and provide input into environmental restoration activities. DoD recommends that, where there is sufficient and sustained interest, installations expand or modify existing TRCs or similar groups to become RABs rather than create a separate committee.

RABs will expand the TRC initiative in the following ways: (1) RABs will involve a greater number of community members than TRCs, thereby better incorporating the diverse needs and concerns of the community directly affected by environmental restoration activities; and (2) chairmanship of the RAB will be shared between the installation and community, promoting partnership and a strong commitment to incorporate the community's concerns into the decision-making process. In these situations, RABs will fulfill the statutory requirements for a TRC.

In order to convert a TRC to a RAB, several tasks must be accomplished. These tasks include: Increasing community representation; adding a community co-chair; and making meetings open to the public. The DoD installation should evaluate the diversity of the current membership of the TRC when converting to a RAB. DoD recommends that the installation should consult with EPA and the state, as appropriate, regarding the diversity of the current membership of the TRC. When formulating RABs, it is DoD's goal to ensure diversity and balance in membership of RABs. DoD believes that current TRC members should be given a preference for a seat on the RAB to preserve continuity and the "institutional history" of the environmental restoration process. However, DoD feels that this preference to include existing TRC members in RABs also should be balanced against the preeminent need to form a RAB truly representative of the community's diverse interests.

### 3. Notification of Formation of a RAB

*a. Public notice and outreach.* Prior to establishing a RAB, DoD proposes that installations should notify potential stakeholders of its intent to form a RAB, including those installations that may be converting TRCs to RABs. In announcing the formation of a RAB, the installation should describe the purpose of a RAB and discuss membership opportunities.

DoD recommends that every effort be made to ensure that a broad spectrum of individuals or groups representing the community's interests are informed about the RAB, its purpose, and membership opportunities. In some cases, it may be necessary that the installation directly solicit some groups or organizations, particularly groups traditionally underrepresented such as low-income and minority segments of the population. Installations should consult the existing TRC, state, and EPA for information or other comments before providing this notice.

*b. RAB information meeting.* While not required in the proposed rule, DoD suggests that an installation sponsor an informational meeting prior to establishing a RAB. The focus of this meeting will be to introduce the concept of RABs to the community and to begin the membership solicitation process.

### 4. Composition of a RAB

*a. Membership.* DoD's goal is that RAB membership be well balanced and reflect the diverse interests within the local community. Therefore, DoD proposes that each RAB should consist of representatives of DoD, EPA, state and local government, and members of the community.

*b. Government representation.* DoD proposes that DoD, EPA, and state and local governments should be represented on the RAB. Potential candidates may include the Remedial Project Manager (RPM) from the installation, EPA, and the state, as well as representatives from local government agencies. In the case of closing military installations, members of the BCT may serve on the RAB as DoD, EPA, and state representatives. It is important that any government representative chosen for RAB membership dedicate the time necessary, and have sufficient authority, to fulfill all RAB responsibilities.

EPA, state, and local regulatory agencies fulfill important roles on a RAB, because of their regulatory oversight of DoD environmental restoration activities. However, EPA stated in the September 27, 1994 Restoration Advisory Board

Implementation Guidelines that its involvement on a RAB will vary based on whether the installation is on the National Priorities List (NPL) under the CERCLA. The NPL, set forth in Title 40 CFR part 300, appendix B, is a list of sites ranked in order of priority for hazardous waste restoration. EPA is committed to full involvement as the federal regulatory agency on RABs where EPA has received resources from DoD. For installations that are not included on the NPL, non-base closure or base closure installations where EPA has not been given resources from DoD, EPA's involvement will be at the discretion of the Regional Administrator of EPA's regional office. DoD has included EPA's discretionary involvement in RABs in the proposed rule.

Ideally, DoD believes that RABs should have only one representative from each government agency, so as to prevent an inordinate representation of government and DoD officials. While DoD encourages other government representatives to attend RAB meetings their role will be strictly one of providing information and support.

*c. Community representation.* RAB community members should live and/or work in the affected community or be affected by the installation's environmental restoration program. While DoD is not proposing specific procedures to be used for selecting community members of the RAB, DoD notes that one of the most sensitive issues facing installations that establish a RAB concerns the selection of community members. When members of the community feel the selection process for RAB members, particularly of community members, is conducted in a fair and unbiased manner, it enhances their perception that the RAB can be a credible forum for the discussion of their issues and concerns. If the selection of community members is not approached carefully, the result can be a loss of trust and failure to achieve dialogue.

DoD will not limit the ability of community RAB members who have business interests to compete for DoD contracts, if proper and appropriate assurances to avoid any potential conflicts of interest are issued.

*d. Roles and responsibilities of members.* DoD proposes that chairmanship of the RAB be shared between the installation and the community. DoD believes this will promote partnering between the two parties and reflect a strong commitment by DoD to incorporate the community's concerns into decisions about the environmental restoration process. Together, the

installation and community co-chairs will jointly determine meeting agendas, run meetings, and ensure that issues related to the environmental restoration are raised and adequately addressed.

DoD also is specifying in the proposed rule that the community co-chair and community RAB members are expected to serve without compensation for their services. DoD considers community membership on a RAB to be voluntary, and therefore these members will not be paid by DoD for the time invested or services rendered.

DoD is not proposing specific requirements concerning the roles and responsibilities of individual members of a RAB. DoD considers the issuance of such regulations to be overly burdensome to the formation and operation of RABs, and therefore unnecessary. DoD recommends that installations consult previous guidance concerning the roles of individual members when forming and operating a RAB.

### B. Operating Requirements

#### 1. Creating a Mission Statement

DoD proposes that each RAB should develop a mission statement that articulates the overall purpose of the RAB. DoD considers this necessary to provide focus and goals for the group. In addition, when members of the RAB agree early on to their mission, it provides a framework for discussions. Without the framework, discussions may become hampered with issues that are not relevant to the environmental restoration process.

#### 2. Selecting Co-Chairs

DoD proposes that the installation co-chair be selected by the installation's CO or as defined by military service-specific guidance, while the community members of the RAB will select the community co-chair. DoD considers it necessary for the community members to select their co-chair to ensure their active participation in the operation of the RAB and to enhance their perception that the RAB can be a credible forum for their issues and concerns.

#### 3. Developing Operating Procedures

DoD considers a formal and agreed-upon set of operating procedures necessary to manage the business of RABs. While DoD will allow each RAB to customize or tailor its operating procedures as it sees fit, DoD proposes that each RAB develop operating procedures on:

- Announcing meetings.
- Attendance of members at meetings.



- Frequency of meetings.
- Additions or removals of RAB members.
- Length of service of members and co-chairs.
- Methods for dispute resolution.
- Review and responses to public comments.
- Participation of the public.
- Keeping the public informed.

With regards to keeping the public informed, DoD proposes that the installation prepare meeting minutes summarizing the topics discussed at the meeting. This is needed to ensure dissemination of the results to community members and interested parties. DoD also proposes that, at a minimum, the minutes should be distributed to the information repositories established under the installation's CRP. Although not required, DoD recommends that the installation consider mailing copies of the minutes to all community members who attended the meeting, existing TRC members, and/or to people identified on the installation's community relations mailing list.

#### 4. Training RAB Members

DoD is not proposing a requirement for training members of the RAB. However, DoD believes that RAB members may need some initial orientation training to enable them to fulfill their responsibilities. DoD recommends that the installation should work with EPA, the state, and environmental groups to develop methods to quickly inform and educate the RAB members and to promote the rapid formation of a fully functioning RAB.<sup>1</sup>

DoD notes that under this proposed rule, only certain types of training will be considered within the scope of administrative support for RABs, and therefore, financed using funds allocated to the administrative expenses of RABs. DoD further discusses training in context of administrative support eligible for available funding in section C.1.b. of this preamble.

#### 5. Conducting RAB Meetings

DoD believes the meeting format of each RAB will vary and be dictated by the needs of the participants. Therefore, DoD is not proposing specific procedures for conducting RAB meetings.<sup>2</sup>

<sup>1</sup> Further guidance on training RAB community members may be found in "Restoration Advisory Board Guidelines, DoD/EPA September 1994."

<sup>2</sup> For further guidance on meeting formats see "Restoration Advisory Board Implementation Guidelines, DoD/EPA September 1994."

Regarding the nature of discussions at RAB meetings, DoD will consider all advice provided by the RAB whether consensus in nature or provided on an individual basis, including advice given that represents the minority view of members. While voting or polling the members may facilitate RAB discussions, such votes should be advisory only and not binding on agency decisionmakers. Group consensus is not a prerequisite for RAB input; each member of the RAB should provide advice as an individual. At the same time, while group consensus is not required or asked of advisory board members, it is recognized that in the natural course of discussions, consensus may evolve.

#### C. Administrative Support, Funding, and Reporting Requirements

##### 1. Administrative Support and Eligible Expenses

a. *Administrative support.* Section 324 of Pub. L. 104-106 amended section 2705(d)(3), title 10, United States Code, authorizes the CO of an installation, or if there is no such commander, an appropriate DoD official, to pay for routine administrative expenses of a RAB established at an installation. To implement this provision, this proposed rule requires that the installation provide administrative support to establish and operate a RAB, subject to the availability of funds. Securing ongoing administrative support is especially important for closing or closed installations.

DoD proposes to define the scope of activities that are unique to the establishment and operation of RABs, and therefore eligible for funds as RAB administrative expenses.

b. *Eligible administrative expenses.* In order for an activity to be considered as an eligible RAB administrative cost, the activity must be unique to and directly associated with establishing and operating the RAB. For example, producing a fact sheet as part of obtaining a hazardous waste storage permit under RCRA or hosting an installation open house as specified by the community relations plan under CERCLA, may not necessarily be relevant to a RAB's mission statement or operations. The costs incurred in preparing and distributing such a fact sheet or holding the open house would not be considered administrative support required for a RAB.

While DoD cannot identify all possible examples of activities unique to and directly associated with establishing and operating a RAB, DoD proposes to consider the following

activities as typical of administrative support required for a RAB:

- RAB establishment.
- Membership selection.
- Certain types of training.
- Meeting announcements.
- Meeting facility.
- Facilitators, including translators.
- Preparation of meeting agenda materials and minutes.
- Maintenance of a RAB mailing list and mailing of RAB materials.

Which regards to training RAB members, DoD clarifies that in order for training to be considered an eligible administrative cost, it must mutually benefit the mission and all members of a RAB and be relevant to the environmental restoration activities occurring at the installation. For example, if the installation were to hold an orientation training for members of a RAB, costs incurred in preparing training manuals, slides, or other presentation materials would be considered an allowable administrative expense, because such training is unique to and mutually beneficial to the mission and members of the RAB.

A type of training that would not qualify as a RAB administrative support includes specialized training for an individual member of a RAB, such as an off-site workshop on building leadership capabilities. DoD does not consider such training to be unique to and mutually beneficial to the establishment and operation of a RAB. However, DoD notes that types of training that are not eligible for funding as a RAB administrative expense may qualify and be eligible for funding as technical assistance.

##### 2. Funding

Section 324(d) of Pub. L. 104-106 amended section 2705(g) title 10, United States Code, prescribes the level and allocation of funds for RAB administrative expenses. Accordingly, DoD is proposing to establish these requirements as is. The proposed rule states that subject to available funding, operating installations should pay for RAB administrative expenses using funds from their Component's DERA. At closing installations, DoD proposes that installations use BRAC funds to pay for eligible RAB administrative expenses.

##### 3. Technical Assistance to Community Members

Section 324(c) of Pub. L. 104-106 revised section 2705(e), title 10, United States Code, enables a RAB or TRC to request from the private sector, technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental

hazards at the installation and the restoration activities conducted, or proposed to be conducted at the installation.

This proposed rule states that community members of RABs or TRCs seeking technical assistance in interpreting information with regard to the restoration activities at an installation may request assistance from such programs as EPA's TAG and TOSC programs. Section 117(e) and 311(d) of CERCLA as amended by SARA, established the TAG and TOSC programs, respectively. These programs provide grants for groups of individuals to hire independent technical advisors who can help them understand technical information, findings, and recommendations related to a site. Regulations for EPA's TAG program are found in 40 CFR part 35 subpart M.

On May 24, 1995, DoD issued a Notice of Request for Comments (60 FR 27460), in which DoD requested comments on three options for technical assistance funding to citizens affected by environmental restoration activities at DoD installations (referred to as the Technical Assistance for Public Participation (TAPP) rulemaking). As the final TAPP rulemaking will specify the selected option for providing technical assistance for short-term training, attendance at workshops, and the procurement of technical consultants to interpret scientific and engineering issues with regard to the nature of environmental hazards at an installation and the restoration activities proposed for or conducted at the installation, DoD does not address these requirements in this proposed rule.

Upon DoD's promulgation of TAPP regulations, community members of RABs or TRCs may request the installation CO, or appropriate DoD official, to obtain from private sector sources technical assistance.

#### 4. Documenting and Reporting Activities and Expenses

Section 324(f) of Pub. L. 104-106 amends section 2706(a)(2) of title 10, United States Code, by adding subsection (j) requiring DoD to report to Congress on the activities of TRCs and RABs. In order to fulfill this requirement, this proposed rule requires that the installation at which a RAB has been established document the activities of the RAB and track expenditures for administrative expenses of the RAB. With regards to tracking expenses, DoD recommends that installations tally costs according to the specific activities identified above (see section IV.C.1.b. of the preamble) that are typical of

administrative support required for a RAB.

Although this proposed rule requires installations to document RAB activities and track expenditures, DoD is not prescribing specific procedures to accomplish this. In addition, DoD will use internal department and service-specific reporting mechanisms to obtain required information from installations on RAB activities and expenditures when reporting to the Congress.

#### V. Regulatory Analysis

##### A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), DoD must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order.

DoD has determined that this proposed rule is not a "significant regulatory action" because it is unlikely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities;
- (2) Create 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 program 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.

##### B. Regulatory Flexibility Act

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601 *et seq.* because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The primary effect of the proposed rule will be to increase community involvement in DoD's environmental restoration program.

##### C. Paperwork Reduction Act

It has been certified that the proposed rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13).

#### VI. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, DoD

must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be \$100 million or more in any one year.

DoD has determined that this proposed rule will not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

#### List of Subjects in 32 CFR Part 202

Administrative practice and procedure, Environmental protection—restoration, Federal buildings and facilities, Organization and functions (Government agencies).

Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, is amended by adding part 202 to read as follows:

#### PART 202—RESTORATION ADVISORY BOARDS (RABs)

##### Subpart A—General Requirements

- Sec.
- 202.1 Purpose, scope, and applicability.
  - 202.2 Criteria for establishment.
  - 202.3 Notification.
  - 202.4 Composition of a Restoration Advisory Board (RAB).

##### Subpart B—Operating Requirements

- 202.5 Creating a mission statement.
- 202.6 Selecting co-chairs.
- 202.7 Developing operating procedures.

##### Subpart C—Administrative Support, Funding, and Reporting Requirements

- 202.8 Administrative support and funding.
- 202.9 Technical assistance to community members.
- 202.10 Documenting and reporting activities and expenses.

Authority: 5 U.S.C. 551 *et seq.* and 10 U.S.C. 2705.

##### Subpart A—General Requirements

###### § 202.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish regulations regarding the characteristics, composition, funding and establishment of Restoration Advisory Boards (RABs).

(b) The regulations in this part apply to all RABs regardless of when the board was established.

(c) The purpose of a RAB is to provide an expanded opportunity for stakeholder input into the environmental restoration process occurring at operating and closing installations and at formerly used defense sites. Stakeholders are those parties that are actually or may be potentially affected by restoration activities at the installation.

(d) A RAB will complement other community involvement efforts

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occurring at an installation; however it does not replace other types of community outreach and participation activities required by applicable laws and regulations.

#### § 202.2 Criteria for establishment.

(a) A RAB should be established when there is sufficient and sustained community interest, and any of the following criteria are met:

- (1) The closure of an installation involves the transfer of property to the community;
  - (2) At least 50 local citizens petition the installation for creation of an advisory board;
  - (3) Federal, state, or local government representatives request the formation of an advisory board; or
  - (4) The installation determines the need for an advisory board.
- (b) To determine the need for establishing a RAB, an installation should:
- (1) Review correspondence files;
  - (2) Review media coverage;
  - (3) Consult local community members;
  - (4) Consult relevant government officials; and
  - (5) Evaluate responses to notices placed in local newspapers.
- (c) The installation shall have lead responsibility for forming and operating a RAB.

#### § 202.3 Notification.

Prior to establishing a RAB, an installation should notify potential stakeholders of its intent to form a RAB. In announcing the formation of a RAB, the installation should describe the purpose of a RAB and discuss opportunities for membership.

#### § 202.4 Composition of a Restoration Advisory Board (RAB).

(a) *Membership.* At a minimum, each RAB should consist of representatives from the Department of Defense (DoD), the U.S. Environmental Protection Agency (EPA), state government, community, and local government. At closing installations, the representatives of the Base Realignment and Closure (BRAC) Cleanup Team (BCT) may also serve as the government representative(s) of the RAB. For non-closing installations, or installations where EPA has not been given support resources from DoD, EPA's involvement will be at the discretion of the Administrator of the appropriate EPA regional office.

(b) *Chairmanship.* Each RAB established shall have two co-chairs: one representing the DoD installation and the other a community member. Co-

chairs shall be responsible for directing and managing the operations of the RAB.

(c) *Compensation for Community Members of the Restoration Advisory Board.* The community co-chair and community members serve voluntarily, therefore they will not be compensated by DoD for their participation.

#### Subpart B—Operating Requirements

##### § 202.5 Creating a mission statement.

Each RAB should develop a mission statement that describes its overall purpose and goals.

##### § 202.6 Selecting co-chairs.

(a) *DoD Installation Co-Chair.* The DoD installation co-chair shall be selected by the installation's Commanding Officer or in accordance with military service-specific guidance.

(b) *Community Co-Chair.* The community co-chair shall be selected by the community members of the RAB.

##### § 202.7 Developing operating procedures.

(a) Each RAB should develop a set of operating procedures. Areas that may be addressed in the procedures involve:

- (1) Announcing meetings;
- (2) Attendance of members at meetings;
- (3) Frequency of meetings;
- (4) Addition or removal of members;
- (5) Length of service for members and co-chairs;
- (6) Methods for dispute resolution;
- (7) Review and responses to public comments;
- (8) Participation of the public in operations of the RAB;
- (9) Keeping the public informed about proceedings of the RAB.

(b) The installation and community co-chairs should prepare meeting minutes summarizing the topics discussed at meetings of the RAB. The installation should make the meeting minutes available in information repositories.

#### Subpart C—Administrative Support, Funding, and Reporting Requirements

##### § 202.8 Administrative support and funding.

(a) Subject to the availability of funding, the installation shall provide administrative support to establish and operate a RAB.

(b) Allowable Administrative Expenses for a Restoration Advisory Board: The following activities unique to and directly associated with establishing and operating a RAB shall qualify as an administrative expense of a RAB:

- (1) Establishment of the RAB;

- (2) Membership selection;
- (3) Certain types of training;
- (4) Meeting announcements;
- (5) meeting facility;
- (6) Meeting facilitators, including translators;

(7) Preparation of meeting agenda materials and minutes;

(8) Maintenance of a mailing list for the RAB and mailings of materials developed and used by the RAB.

##### (c) Funding:

(1) At operating installations, administrative expenses for a RAB shall be paid for using funds from the Component's Environmental Restoration Accounts.

(2) At closing installations, administrative expenses for a RAB shall be paid using Base Realignment and Closure (BRAC) funds.

##### § 202.9 Technical assistance to community members.

Community members of a RAB or TRC may request technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and restoration activities conducted, or proposed to be conducted at the installation.

##### § 202.10 Documenting and reporting activities and expenses.

The installation, at which a RAB is established, shall document the activities and record the administrative expenses associated with the RAB.

Dated: July 31, 1996.

Patricia L. Toppings.

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-19886 Filed 8-5-96; 8:45 am]

BILLING CODE 5000-04-M

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 25

[IB Docket No. 96-132; FCC 96-259]

#### Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: American Mobile Satellite Corporation ("AMSC") is the only U.S. mobile satellite service ("MSS") system currently authorized to operate in the upper L-band. However, international coordination has been extremely difficult and we do not believe we will be able to secure sufficient spectrum in the upper L-band for AMSC's operations. Therefore, the Commission

**ADDENDUM TO KELLY AIR FORCE BASE RESTORATION ADVISORY  
BOARD CHARTER (Approved, as amended, on July 29, 1998)  
APPOINTMENT / REAPPOINTMENT PROCESS**

**Composition.** The total number of Board members shall not be greater than twenty-five (25). The RAB will include representatives of the United States Department of Defense; the United States Environmental Protection Agency; the Texas Commission on Environmental Quality, and the local reuse authority. The RAB will also include five representatives from state and local governmental agencies. The remaining sixteen representatives will be elected from the community. A minimum of eight of the sixteen community positions shall currently reside, own property, or be employed within the neighborhoods surrounding the plume, as described in "Appointment of community positions" below.

**Applications.** Designated representatives of community and other interest groups, as well as individual citizens, may apply for membership to the Board as a community member. To be considered for selection as a Board community member, a person must submit an application on a form approved by the Board no later than fourteen (14) days prior to the date of the Board meeting at which membership will be considered for approval. The applicant should either be present or be represented by an alternate at the meeting at which his or her membership is considered. If an applicant is unable to attend the election meeting, he or she may be considered if he or she informs one of the co-chairs that he or she cannot attend. RAB members whose terms are ending must notify the RAB of their intention to seek reappointment prior to the roll-call for voting on appointments. RAB members are not required to complete a new application unless any information on their previously filed application has changed or needs to be altered.

**Appointment of community positions (64% of available RAB positions)** New community applicants as well as outgoing community members who have stated their intention to seek reappointment will be considered for membership on the Board. A minimum of eight of the sixteen community positions shall currently reside, own property, or be employed within the neighborhoods surrounding the plume, as indicated in Appendix A to this addendum. The RAB shall achieve this proportionate representation before the conclusion of calendar year 2004. A minimum of six "affected community" positions shall be filled upon completion of the 2003 appointment process.

Applicants for community board membership must be appointed by a majority of those community Board members in attendance whose terms are still active. Normally scheduled appointment meetings shall be held in the fall of each calendar year. Repeated balloting may be necessary to obtain the required proportion of community RAB member representation identified above.

The RAB will first appoint members from the "affected community" to comply with the proportionate representation indicated above. Only those applicants who currently reside, own property, or are employed in the area surrounding the plume, as indicated in Appendix A, shall be considered at this time.

After the required proportion of community RAB member representation is achieved, balloting shall proceed to fill the remaining community member vacancies on the RAB. During this portion of the appointment/reappointment process, all applicants shall be considered. An exception is made for appointments related to resignations by community members as identified in "Resignation" below.

**Appointment of other government board positions (36% of available RAB positions)**

As noted in "Composition" above, the RAB will include representatives of the United States Department of Defense; the United States Environmental Protection Agency; the Texas Commission on Environmental Quality; and the local reuse authority. The remaining five government board positions will be filled by government agencies selected by the Air Force co-chair with input of the RAB.

**Attendance of community members.** Members are expected to attend all Board meetings or to request their respective alternates to attend in their absence. The Board membership of any community member who fails to attend or send an alternate to three consecutive meetings may be revoked by a majority of the community RAB members.

**Attendance of other government members.** The RAB will request that a government agency appoint a new representative if a government member fails to attend or send an alternate to three consecutive meetings.

**Resignation.** Any member who determines he or she is unable to continue to participate fully may submit a resignation in writing or orally to either of the Board co-chairs. A resigning member will be replaced by his or her designated alternate. If the member has no alternate, candidates from the application pool will be considered via the community selection process outlined in "Applications" and "Appointment of Community Positions" above. A new community member appointed to fill a resigned position shall complete the original term of the position.

**Alternate Members.** Within 60 days of appointment/reappointment, RAB members who currently reside, own property, or are employed within the neighborhoods surrounding the plume shall designate an alternate who currently resides, owns property, or is employed within the neighborhoods surrounding the plume, as indicated in Appendix A to this addendum. Within 60 days of appointment/reappointment, RAB members who do not currently reside, own property, or who are not employed within the neighborhoods surrounding the plume shall designate an alternate.

**Terms.** The term of office for a community Board position is two years, commencing upon appointment and ending on December 31 of the following year. After serving all or part of a two-year term, a member may continue to serve additional two-year terms by complying with the provisions of "Applications" and "Appointment of Community Positions" above.

**Election of Co-chair.** The RAB Community Co-chair will be selected by a majority vote of the Board community members. The Board Community Co-chair will serve a 12-month term, commencing with the second Board meeting in each calendar year. A Co-chair may serve two or more terms, including consecutive terms, if approved by the Board community members.

**Removal or Resignation of Community Co-chair.** The community Board members in attendance may, by a two-thirds majority vote, remove a Community Co-chair prior to the expiration of the term of office of such Co-chair if that person is determined to be ineffective or detrimental to the progress of the Board. The vote to remove a Community Co-chair shall be taken at the meeting following the one at which the removal is proposed. The community Board members may remove the Community Co-chair or the Community Co-chair may choose to resign his or her chair without affecting his or her RAB membership. In this circumstance, a new Community Co-chair will be elected from the remaining community members by a majority vote of the Board community members in attendance.



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

FEB 04 2005

Dear Concerned Citizen:

The Department of Defense (DoD) is pleased to announce the publication of a proposed rule regarding the establishment, composition, characteristics, scope, operation, funding, adjournment, and dissolution of Restoration Advisory Boards (RABs). DoD proposed this rule in response to 10 U.S.C. § 2705(d)(2)(A), which required the Secretary of Defense to develop regulations governing RABs. The regulations are based on DoD's current policies for establishing and operating RABs, and DoD's ten years experience working with RABs.

DoD understands that communication and cooperation with states, RAB co-chairs, and other stakeholders is fundamental to the success of its Defense Environmental Restoration Program (DERP). It is DoD's policy to involve these parties in all aspects of the environmental restoration process. The partnerships developed with states, RAB co-chairs, and other stakeholders have expedited DoD's fulfillment of its environmental restoration responsibilities. For this reason, we encourage you and all interested members of the public to participate in the review of the proposed RAB rule during the official public comment period, which extends through **March 29, 2005**.

You may participate by submitting your comments electronically to Ms. Patricia Ferreebe, Office of the Deputy Under Secretary of Defense (Environmental Management) through the Web at <http://www.denix.osd.mil/rabrul> or via electronic mail (e-mail) to [Patricia.Ferreebe@osd.mil](mailto:Patricia.Ferreebe@osd.mil). Comments may also be mailed to RAB Rule, P.O. Box 5413, McLean, VA 20103-5413. Any questions should be directed to Ms. Ferreebe by telephone at (703) 695-6107. We encourage you to share this proposed rule with other interested stakeholders and community members.

To summarize, DoD is very interested in receiving input about the proposed RAB rule. Please consider participating by submitting comments in one of the abovementioned ways. I thank you for your attention to this letter and your future participation in this effort. This is an important initiative for DoD, and we want to be sure that we fully address the concerns of states, RAB co-chairs, and all other stakeholders as we move forward.

Sincerely,

Alex A. Beehler

Assistant Deputy Under Secretary of Defense  
(Environment, Safety and Occupational Health)

Enclosure



**Drafting Information**

The principal authors of these regulations are Bruce Perlin and Linda S.F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.401(a)-20 is amended by:

1. Adding a sentence to the end of Q&A-16.

2. Adding a sentence to the end of Q&A-36.

The additions read as follows:

**§ 1.401(a)-20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.**

A-16 \* \* \* A plan does not fail to satisfy the requirements of this Q&A-16 merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of section 417(e)(3) is calculated using the applicable interest rate (and, for periods when required, the applicable mortality table) under section 417(e)(3).

A-36 \* \* \* However, the rules of § 1.401(a)-20, Q&A-36, as it appeared in 26 CFR Part 1 revised April 1, 2003, apply to the explanation of a QJSA under section 417(a)(3) for an annuity starting date prior to February 1, 2006.

Par. 3. Section 1.417(a)(3)-1 is amended by:

1. Removing the language "paragraph (c)(3)(iii) of" from paragraph (c)(2)(ii)(A).

2. Adding a sentence to the end of paragraph (d)(2)(ii).

3. Adding paragraph (d)(5).

4. Revising paragraph (f).

The additions and revision read as follows:

**§ 1.417(a)(3)-1 Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.**

(d) \* \* \*

(2) \* \* \*

(ii) *Actual benefit must be disclosed.*

\* \* \* Reasonable estimates of the type described in paragraph (c)(3)(i) may be used to determine the normal form of benefit for purposes of this paragraph (d)(2)(ii) if the requirements of paragraphs (c)(3)(ii) and (iii) of this section are satisfied with respect to those estimates.

(5) *Use of participant-specific information in generalized notice.* A QJSA explanation does not fail to satisfy the requirements of this paragraph (d) merely because it contains an item of participant-specific information in place of the corresponding generally applicable information.

(f) *Effective date—(1) General effective date for QJSA explanations.* Except as provided in paragraph (f)(2) of this section, this section applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after February 1, 2006.

(2) *Special effective date for certain QJSA explanations—(i) Application to QJSA explanations whose value are less valuable than the QJSA.* This section also applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and before February 1, 2006, if the actuarial present value of any optional form of benefit that is subject to the requirements of section 417(e)(3) (e.g., single sums, distributions in the form of partial single sums in combination with annuities, social security level income options, and installment payment options) is less than the actuarial present value (as determined under § 1.417(e)-1(d)) of the QJSA. For purposes of this paragraph (f)(2)(i), the actuarial present value of an optional form is treated as not less than the actuarial present value of the QJSA if—

(A) Using the applicable interest rate and applicable mortality table under § 1.417(e)-1(d)(2) and (3), the actuarial present value of that optional form is not less than the actuarial present value of the QJSA for an unmarried participant; and

(B) Using reasonable actuarial assumptions, the actuarial present value of the QJSA for an unmarried participant is not less than the actuarial present value of the QJSA for a married participant.

(ii) *Requirement to disclose differences in value for certain optional forms.* A QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and before February 1, 2006, is only required to be provided under this section with respect to—

(A) An optional form of benefit that is subject to the requirements of section 417(e)(3) and that has an actuarial present value that is less than the actuarial present value of the QJSA (as described in paragraph (f)(2)(i) of this section); and

(B) The QJSA (determined without application of paragraph (c)(2)(ii) of this section).

(3) *Annuity starting date.* For purposes of paragraphs (f)(1) and (2) of this section, in the case of a retroactive annuity starting date under section 417(a)(7), as described in § 1.417(e)-1(b)(3)(vi), the date of commencement of the actual payments based on the retroactive annuity starting date is substituted for the annuity starting date.

(4) *Effective date for QPSA explanations.* This section applies to any QPSA explanation provided on or after July 1, 2004.

Mark E. Matthews,  
Deputy Commissioner for Services and Enforcement.

[FR Doc. 05-1553 Filed 1-27-05; 8:45 am]  
BILLING CODE 4830-01-P

**DEPARTMENT OF DEFENSE**

**32 CFR Part 202**

**Restoration Advisory Boards (RABs)**

**AGENCY:** Department of Defense, Office of the Deputy Under Secretary of Defense (Installations and Environment), DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (DoD) requests public comment on these proposed regulations regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of Restoration Advisory Boards (RABs). DoD has proposed these regulations in response to 10 U.S.C. 2705(d)(2)(A), which requires the Secretary of Defense to prescribe regulations regarding RABs.

The propose of the RAB is to facilitate public participation in DoD environmental restoration activities and active and closing DoD installations and formerly used defense sites where local communities express interest in such activities. The proposed regulations are based on DoD's current policies for



reestablishing and operating RABs, as well as DoD's experience over the past ten years in using RABs.

**DATES:** Comments on this proposed rule must be submitted on or before March 29, 2005.

**ADDRESSES:** Comments on this proposal should be sent to the following address: RAB Rule, P.O. Box #5413, McLean, VA 22103-5413.

The public must send the original, and (whenever possible) a 3.5-inch computer disk containing comments in a common word processing format such as Microsoft Word. Public comments will also be collected via the Defense Environmental Network and Information eXchange (DENIX), located at the following Web site: <https://www.denix.osd.mil/rabruleTBD>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Environmental Management), at (703) 695-6107.

#### SUPPLEMENTARY INFORMATION:

##### Preamble Outline

##### I. Authority

##### II. Background

##### III. Summary of the Proposed Rule

- A. General Requirements
- B. Operating Requirements
- C. Administrative Support, Funding, and Reporting Requirements

##### IV. Section-by-Section Analysis of the Proposed Rule

##### A. General Requirements

1. Purpose, Scope, Definitions, and Applicability
  - a. Purpose
  - b. Purpose and Scope of Responsibilities of RABs
  - c. Definitions
  - d. Other Public Involvement Activities
  - e. Applicability of Regulations to Existing RABs
  - f. Guidance
2. Criteria for Establishment
  - a. Determining if Sufficient Interest Warrants Establishing a RAB
  - b. Responsibility for Forming and Operating a RAB
  - c. Converting Existing Technical Review Committees (TRCs) to RAB
3. Notification of Formation of a RAB
  - a. Public Notice and Outreach
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4. Composition of a RAB
  - a. Membership
  - b. Government Representation
  - c. Community Representation
  - d. Chairmanship
  - e. Compensation for Community Members of the RAB
  - f. Roles and Responsibilities of Members
- B. Operating Requirements
  1. Creating a Mission Statement
  2. Selecting Co-Chairs
  3. Developing Operating Procedures
  4. Training RAB Members
  5. Conducting RAB Meetings
    - a. Public Participation

##### b. Nature of Discussions

##### c. Meeting Minutes

##### 6. RAB Adjournment and Dissolution

- a. RAB Adjournment
- b. RAB Dissolution
- c. Reestablishing an Adjourned or Dissolved RAB
- d. Public Comment

##### 7. Documenting RAB Activities

##### C. Administrative Support, Funding, and Reporting Requirements

1. Administrative Support and Eligible Expenses
  - a. Administrative Support
  - b. Eligible Administrative Expenses
  - c. Funding
2. Technical Assistance for Public Participation (TAPP)
3. Documenting and Reporting Activities and Expenses

##### V. Regulatory Analysis

- A. Regulatory Impact Analysis Pursuant to Executive Order 12866
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act
- ##### VI. Unfunded Mandates

##### I. Authority

These regulations are proposed under the authority of section 2705 of title 10, United States Code (U.S.C.).

##### II. Background

The Defense Environmental Restoration Program (DERP) was established in 1986 to "carry out a program of environmental restoration of facilities under the jurisdiction of the Secretary." Goals of the program include: "(1) Identification, investigation, research and development, and cleanup of contamination from hazardous substances, and pollutants and contaminants. (2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment. (3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary." (10 U.S.C. 2701) DoD conducts these activities at active and closing Department of Defense (DoD) installations and formerly used defense sites (FUDS). DoD created distinct programs within the DERP to address sites environmentally impacted by DoD's past activities. The Installation Restoration program (IRP) established in 1986 covers environmental restoration activities to address hazardous substances, and, pollutants and contaminants. In September 2001, DoD established the Military Munitions Response program (MMRP) to manage

cleanup of unexploded ordnance, discarded military munitions, and munitions constituents at areas other than operational ranges. The Building Demolition/Debris Removal (BD/DR) program category addresses the demolition and removal of unsafe buildings and structures at facilities or sites that are or were owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense.

During the early years of the DERP, the Office of the Secretary of Defense (OSD) managed the Defense Environmental Restoration Account (DERA) for the Department's Military Components—the Army, Navy, Air Force, Defense Logistics Agency (DLA), and Defense Threat Reduction Agency (DTRA)—who execute environmental restoration activities at their respective installations. In 1996, DoD decided to separate, or devolve, DERA into five Environmental Restoration (ER) accounts to better align each Military Component's DERP responsibilities and accountability for environmental cleanup efforts. Policy direction and oversight of the DERP is the responsibility of the Office of the Deputy Under Secretary of Defense (Installations and Environment). The DoD Military Components are responsible for program implementation. The Army, Navy, and Air Force manage their own ER accounts. The U.S. Army Corps of Engineers manages the FUDS program for the Army, the Department's designated executive agent for FUDS. The FUDS program addresses environmental impacts on properties DoD once owned, leased, or operated and were under the jurisdiction of the Secretary of Defense. The final ER account, the Defense-Wide account, funds cleanup programs for DLA and DTRA in addition to providing the operating funds for OSD's oversight of the DERP. While DoD manages environmental restoration at Base Realignment and Closure (BRAC) installations as part of the DERP, it funds these environmental restoration activities through a separate BRAC Program account, which is part of DoD's overall Military Construction appropriation.

DoD recognizes the importance of public involvement at military installations. For the purposes of this proposed rule, the term installation means operating and closing DoD installations and FUDS that require environmental restoration. DoD has developed community involvement policies to ensure that local communities are provided the

opportunity as early as possible to obtain information about, and provide input to, the decisions regarding the environmental restoration activities at military installations. It is DoD policy to provide the public an opportunity to participate through the establishment of RABs, among other public involvement opportunities.

Based on statutory and regulatory requirements for community involvement and recommendations from the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC), DoD has strengthened its community involvement efforts, including the RAB initiative, under its environmental restoration program. DoD believes that working in partnership with local communities and addressing the concerns of those communities early in the restoration process has enhanced its efforts under, and increased the credibility of, the environmental restoration program. DoD remains committed to involving communities neighboring its installations in environmental restoration decision processes that may affect human health, safety, and the environment. RABs have become a significant component of DoD's efforts to increase community involvement in DoD's environmental restoration program. RABs provide a continuous forum through which members of affected communities can provide input to an installation's ongoing environmental restoration activities. RAB members provide recommendations regarding environmental restoration to DoD, RABs are not Federal Advisory Committees and are specifically excluded from the requirements of the Federal Advisory Committee Act (10 U.S.C. 2705(d)(2)).

On September 27, 1994, DoD and the Environmental Protection Agency (EPA) jointly issued guidelines for the formation and operation of RABs ("Restoration Advisory Board Implementation Guidelines"). The guidelines describe how to implement the DoD RAB policy and identify each stakeholder's role with the RAB. The guidelines also state that existing Technical Review Committees (TRCs) or similar groups may be expanded or modified to become RABs, and that RABs may fulfill the statutory requirements for establishing TRCs (10 U.S.C. 2705(d)(1) grants DoD the authority to establish RABs instead of TRCs at installations undergoing environmental restoration).

As of September 30, 2003, DoD reported the existence of 298 active RABs across all of the Military Components' installations. Over the past

several years, the number of RABs has remained fairly consistent, although the number fluctuates as some RABs adjourn and others form. RABs are one part of DoD's and the Military Components' extensive community outreach and public participation activities, which include compliance with the public notice and participation requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), and other federal and state environmental laws as well as considerable consultation with our partners at federal, state and local government agencies. A RAB, however, may address only issues associated with environmental restoration activities under the DERP at DoD installations, including activities conducted under the MMRP category of the DERP to address unexploded ordnance, discarded military munitions, and the chemical constituents of munitions. If a RAB already exists at an installation and MMRP sites are identified, the RAB may be expanded to consider additional issues related to the MMRP sites. If the current RAB or DoD installation decides that it is necessary to involve new stakeholders, the installation should notify potential stakeholders of its intent to expand the RAB and solicit new members who have an interest in issues related to the MMRP. If there is no current RAB active at the installation and MMRP sites are identified, the installation will follow the prescribe guidance for determining sufficient community interest in forming a RAB.

The Secretary of Defense is required to "prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards" (10 U.S.C. 2705(d)(2)(A)). DoD's issuance of regulations is not, however, a precondition to the establishment of RABs (10 U.S.C. 2705(d)(2)(B)). Therefore, DoD proposes these regulations regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. DoD recognizes that each RAB established will be a unique organization dealing with installation-specific issues. This proposal, developed consistent with the recommendations set forth in the FFERDC's Final Report, is consistent with existing DoD and EPA policy on RABs, and reflects over ten years of experience in establishing and operating RABs throughout the United States. DoD has structured this proposal to

maximize flexibility for RAB members and installations nationwide.

### III. Summary of the Proposed Rule

DoD is requesting public comment on these proposed regulations regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. This section of the preamble provides a summary of the proposed regulations in 32 CFR part 202.

#### A. General Requirements

In this section of the proposed rule, DoD discusses the purpose, scope, relevant definitions, and applicability of the proposed regulations for RABs. DoD is required by 10 U.S.C. 2705(d)(2)(A) to issue regulations concerning the establishment, characteristics, composition, and funding of RABs. When issued as a final rule, the regulations will apply to all RABs, regardless of when they were established.

In this proposal, DoD defines the purposes of a RAB as follows:

- Provide an expanded opportunity for stakeholder involvement in the environmental restoration process at DoD installations.
- Act as a forum for the discussion and exchange of restoration program information, addressing the concerns of stakeholders and effectively reaching key groups and representatives from DoD, regulatory agencies, tribes, and the community.
- Provide an opportunity for RAB members to review progress and participate in a dialogue with the installation's decision makers concerning environmental restoration matters. Installations will listen, carefully consider, and provide specific responses to the recommendations provided by the individual RAB members. While a RAB will complement other community involvement efforts the installation undertakes concerning environmental restoration, a RAB does not replace other types of community outreach and participation activities required by applicable federal and state laws.

A RAB may address issues associated with environmental restoration activities under the DERP at DoD installations. DoD funds RABs with money dedicated to supporting environmental restoration activities under the DERP. DoD understands that RABs may want to address environmental issues beyond the scope of environmental restoration activities. In these circumstances the installation co-chair should assist the interested individuals in finding the proper venue

to support a broader scope of issues. Environmental groups or advisory boards that address issues other than environmental restoration activities are not governed by this regulation.

The Office of the Deputy Under Secretary of Defense for Installations and Environment will issue guidance regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs pursuant to this rule. The issuance of the guidance is not a precondition to the establishment of RABs or the implementation of this rule.

This section of the proposed rule also discusses the criteria for establishment, notification of the formation, and composition of a RAB.

#### *B. Operating Requirements*

In this section of the proposed rule, DoD establishes basic requirements for the operation of a RAB. DoD proposes that each RAB will have a mission statement that describes its overall purpose and goals. DoD also specifies certain requirements regarding the selection process for co-chairs.

DoD proposes that each RAB will develop a set of operating procedures. Areas that may be addressed in the procedures include: clearly defined goals and objectives for the RAB, as determined by the DoD installation co-chair in consultation with the RAB; development and approval procedures for the RAB meeting minutes; attendance of members at meetings; meeting frequency and location; rules of order; frequency and procedures for conducting training; procedures for selecting, adding, or removing RAB members and co-chairs; specifics on the size of the RAB membership and the length of service for RAB members and co-chairs; methods for resolving disputes; processes for reviewing and responding to public comments on issues being addressed by the RAB; procedures for public participation in RAB activities; and keeping the public informed about RAB proceedings.

DoD is not proposing specified requirements concerning the conduct of RAB meetings because the meeting format of each RAB will vary and be dictated by the needs of the participants. DoD proposes, however, that all RAB meetings be open to the public; the installation will provide timely notice of each meeting in a local newspaper of general circulation; each RAB meeting will be held at a reasonable time and in a manner or place reasonably accessible to and usable by persons with disabilities; the installation co-chair will prepare meeting minutes of the RAB meetings;

and the meeting minutes and other relevant documents will be available for public inspection and copying at a single, publicly accessible location. Additionally, the installation will document information on the activities of a RAB in the information repository.

In this section of the proposed rule, DoD also establishes requirements for adjourning a RAB. An Installation Commander may adjourn a RAB when there is no longer a need for a RAB or when community interest in the RAB declines. For FUDS, the Installation Commander may be the District Commander or equivalent.

Although Installation Commanders are expected to make every reasonable effort to ensure that a RAB performs its role as efficiently as possible, circumstances may prevent a RAB from operating efficiently or fulfilling its intended purpose. When this occurs, the Installation Commander will make a concerted attempt to resolve the issues that affect the RAB's effectiveness. If unsuccessful, the Installation Commander may elect to dissolve the RAB. The Installation Commander should discuss dissolution with regulators and the community as a whole before making a final decision. This section of the rule provides guidelines for how an Installation Commander may elect to dissolve a RAB.

In this section of the proposed rule, DoD sets forth requirements for adjourning a RAB, adjournment procedures, dissolving a RAB, dissolution procedures, reestablishing an adjourned or dissolved RAB, and public comment.

#### *C. Administrative Support, Funding, and Reporting Requirements*

In this section of the proposed rule, DoD sets forth requirements regarding administrative support for establishing, operating, and adjourning or dissolving a RAB, funding for administrative support, and reporting requirements regarding the activities and administrative expenses associated with RABs.

The Installation Commander, or if there is no such Commander, an appropriate DoD official, is authorized to pay for routine administrative expenses of a RAB established at an installation (10 U.S.C. 2705(d)(3)). To implement this provision, this proposed rule requires that the installation provide administrative support to establish and operate a RAB, subject to the availability of funds. The scope of this support corresponds to those activities that are eligible for DoD funding, including:

- RAB establishment
- Membership selection
- Training that meets certain criteria
- Meeting announcements
- Meeting facility, including accommodations necessary to comply with the Americans with Disabilities Act
  - Meeting facilitators, including translators
  - Meeting materials and minutes preparation
  - RAB-member mailing list maintenance and RAB materials distribution
  - RAB adjournment and dissolution.

The Secretaries of the Military Departments will make funds available for RAB administrative expenses (10 U.S.C. 2705(g)), subject to appropriations. The proposed rule establishes these requirements and specifies that active installations should pay for RAB administrative expenses using funds from their Military Component's ER accounts. The ER-FUDS account is used to pay for RAB administrative expenses at FUDS. At BRAC installations, the Base Closure account is used to pay for RAB administrative expenses.

This section of the rule also discusses the opportunities for the RAB to obtain technical assistance to facilitate members' understanding of the scientific and engineering issues underlying environmental restoration activities through DoD's Technical Assistance for Public Participation (TAPP) program. The DoD installation may also provide in-house assistance to discuss technical issues.

DoD is required to report annually to Congress on the activities of Technical Review Committees (TRCs) and RABs (10 U.S.C. 2706(a)(2)(J)). In order to fulfill this requirement, this proposed rule requires that where RABs are established the installation documents the activities of the RAB and tracks expenditures for administrative expenses of the RAB. This proposed rule does not prescribe specific procedures for the installation to follow as part of DoD's information collection when reporting to Congress. Rather, DoD will rely on existing internal reporting mechanisms within the Department and Military Components to collect this information annually.

#### **IV. Section-by-Section Analysis of the Proposed Rule**

This section of the preamble presents an analysis of each section of the proposed rule.

### A. General Requirements

#### 1. Purpose, Scope, Definitions, and Applicability

a. Purpose. The purpose of this part is to establish regulations regarding the characteristics, composition, funding, and establishment of RABs, as required by 10 U.S.C. 2705(d)(2)(A), and the operation, adjournment, and dissolution of RABs.

b. Purpose and Scope of Responsibilities of a RAB. DoD is proposing the purposes of a RAB be:

- To provide an expanded opportunity for stakeholder involvement in the environmental restoration process at DoD installations. DoD considers "stakeholders" to be parties that are actually or potentially affected by environmental restoration activities at an installation.

- To act as a forum for the discussion and exchange of restoration program information between DoD, regulatory agencies, and the community.

- To provide an opportunity for RAB members to review progress and participate in a dialogue with the installation's decision makers concerning environmental restoration matters. Installations will listen, give careful consideration, and provide specific responses to the recommendations provided by individual RAB members. Consensus is not a prerequisite for RAB member recommendations.

A RAB may address issues associated with environmental restoration activities under the DERP at DoD installations. DoD funds RABs with money dedicated to supporting environmental restoration activities under the DERP. DoD understands that RABs may want to address environmental issues beyond the scope of environmental restoration activities. In these circumstances the installation should assist the interested individuals in finding the proper venue to support a broader scope of issues.

Environmental groups, advisory boards, or other entities that address issues other than environmental restoration activities are not RABs.

This proposed rule does not list specific responsibilities of RAB members, but DoD considers the following types of activities within the scope of RAB members' functions:

- Providing advice to the installation, EPA, state regulatory agency, and other government agencies on restoration activities and community involvement.
- Addressing important issues related to restoration, such as the scope of studies, cleanup levels, waste

management, and remedial action alternatives.

- Reviewing and evaluating documents associated with environmental restoration activities, such as plans and technical reports.

- Identifying environmental restoration projects to be accomplished in the next fiscal year and beyond.

- Recommending priorities among environmental restoration sites or projects.

- Attending regular meetings that are open to the public and scheduled at convenient times and locations.

- Interacting with the local redevelopment authority (LRA) or other land use planning bodies to discuss future land use issues relevant to environmental restoration decision-making.

- Providing feedback to other community members on RAB activities and share community concerns and input with the RAB.

By establishing a RAB, DoD hopes to ensure that interested stakeholders have a voice and can actively participate in a timely and thorough manner in the planning and implementation of the environmental restoration process. A RAB will serve as one method for the expression and careful consideration of diverse points of view.

Installations will listen and give careful consideration to all advice provided by individual members.

DoD proposes that each installation undergoing environmental restoration activities establish a RAB where there is sufficient and sustained community interest. Where TRCs or similar advisory groups already exist, the TRC or similar advisory group will be considered for conversion to a RAB, provided there is sufficient and sustained interest within the community. DoD will recognize only one RAB or TRC per installation.

c. Definitions. In this section:

- Installation will include active and closing Department of Defense (DoD) installations and formerly used defense sites (FUDS).

- Community RAB member shall mean those individuals identified by community members and appointed by the Installation Commander to participate in a RAB who live and/or work in the affected community or are affected by the installation's environmental program.

- Environmental restoration shall include the identification, investigation, research and development, and cleanup of contamination from hazardous substances, and pollutants and contaminants.

- Installation Commander will include the Commanding Officer of an

installation; the Installation Commander or other Military Department officials who close the facility and are responsible for its disposal at BRAC installations; or the U.S. Army Corps of Engineers Project Management District Commander at FUDS properties.

- Public participants shall include anyone else who may want to attend the RAB meetings, including those individuals who may not live and/or work in the affected community or may not be affected by the installation's environmental program but would like to attend and provide comments to the RAB.

- Stakeholders are those parties that may be affected by environmental restoration activities at an installation, including family members of military personnel and civilian workers, and tribal community members and indigenous people, as appropriate.

- Tribes means any federally recognized American Indian and Alaska Native government as defined by the most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in the Federal Register pursuant to Section 104 of the Federally Recognized Tribe Act.

- RAB adjournment means when an Installation Commander, in consultation with the EPA, state, tribes, RAB members, and the local community, as appropriate, closes the RAB based on a determination that there is no longer a need for a RAB or when community interest in the RAB declines sufficiently.

- RAB dissolution means when an Installation Commander disbands a RAB that is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental cleanup projects.

Installation Commanders are expected to make every reasonable effort to ensure that a RAB performs its role as effectively as possible and makes a concerted attempt to resolve issues that affect the RAB's effectiveness. There are circumstances, however, that may prevent a RAB from operating efficiently or fulfilling its intended purpose.

d. Other Public Involvement Activities. RABs are one part of DoD and the Military Components' extensive community outreach and public participation activities, which include compliance with the public notice and participation requirements of CERCLA, RCRA, and other federal and state environmental laws, as well as considerable consultation with our partners at federal, state, and local environmental and resource agencies.

e. Applicability of Regulations to Existing RABs. DoD is proposing these

regulations regarding the establishment, characteristics, composition, and funding of RABs (10 U.S.C. 2705(d)(2)(A)) to formalize current Department policy. DoD intends that the final regulations will apply to all RABs, including RABs established prior to the effective date of the final rule. DoD does not consider that applying final regulations to RABs already established will pose any additional requirements or conflict because the proposed regulations are based on existing DoD policy that has been implemented since September 1994.

f. **Guidance.** The Office of the Deputy Under Secretary of Defense for Environment will issue guidance regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs pursuant to this rule. The issuance of the guidance is not a precondition to the establishment of RABs or the implementation of this rule.

## 2. Criteria for Establishment

a. **Determining if Sufficient Interest Warrants Establishing a RAB.** In this rule, RABs may only be established at installations undergoing environmental restoration. There may be only one RAB per installation. In accordance with existing policy, DoD proposes that a RAB be established when the Installation Commander finds sufficient and sustained community interest and any of the following criteria are met:

- The closure of an installation involves the transfer of property to the community;
- At least 50 local citizens petition for a RAB;
- Federal, state, tribal, or local government representatives request formation of a RAB; or
- The installation determines the need for a RAB.

To clarify how an installation will determine the need for a RAB, DoD proposes that the Installation Commander determine the level of interest within the community for establishing a RAB by:

- Reviewing correspondence files;
- Reviewing media coverage;
- Consulting community members;
- Consulting relevant government officials; and
- Evaluating responses to communication efforts, such as notices placed in local newspapers.

At the majority of installations that have an environmental restoration program, DoD expects that local communities will be interested in forming a RAB. DoD notes that installation efforts identify the level of community interest in establishing a

RAB should not be limited to a one-time assessment of the criteria discussed above. In special circumstances it may be advantageous to establish a joint RAB for multiple installations. The decision to establish a joint RAB must be made in consultation with RAB members. Only one RAB, however, will be recognized per installation. If a RAB already exists at an installation and there will be MMRP sites, the RAB may be expanded to consider issues related to the MMRP sites. If the current RAB or DoD installation decides that it is necessary to involve new stakeholders, then installation should notify potential stakeholders of its intent to expand the RAB and solicit net members who have an interest in issues related to the MMRP.

Where RABs are not formed initially, installations undergoing environmental restoration activities will reassess community interest at least every 24 months. Reassessment of community interest should include public notice through local media, such as a local newspaper. Where the reassessment finds sufficient and sustained community interest, the installation should establish a RAB. Where the reassessment does not find sufficient and sustained community interest in a RAB, the installation will document, in a memorandum for the Administrative Record, the procedures followed in the reassessment and the findings of the reassessment.

When all environmental restoration decisions have been made and required remedies are in place and properly operating at an installation, reassessment of the community interest for establishing or reestablishing a RAB is not necessary every 24 months. When additional environmental restoration decisions have to be made resulting from subsequent actions, such as long-term monitoring and five-year reviews, the installation will reassess community interest for establishing or reestablishing a RAB.

b. **Responsibility for Forming and Operating a RAB.** Once the installation determines that a RAB will be established, DoD proposes that the Installation Commander have the lead responsibility for forming and operating the RAB. The Installation Commander should have lead responsibility because the RAB will be an integral part of the installation's community involvement and outreach programs. The Installation Commander may also delegate his or her duties to appropriate personnel but retains oversight authority and responsibility. DoD recommends that installations involve, as appropriate, EPA, and state, tribal, and local

governments and community members in all phases of RAB planning and operation.

c. **Converting Existing Technical Review Committees (TRCs) to RABs.** Before the implementation of RABs, TRCs were established at DoD installations to provide interested parties with a forum to discuss and provide input into environmental restoration activities. In accordance with 10 U.S.C. 2705(d)(1), a RAB fulfills the requirements of 10 U.S.C. 2705(c), which directs DoD to establish TRCs. DoD recommends that, where TRCs or similar advisory groups already exist, provided there is sufficient and sustained interest within the community for a RAB, the TRC or similar advisory group should be considered for conversion to a RAB.

RABs expand the TRC initiative in the following ways: (1) RABs involve a greater number of community members than TRCs, thereby better incorporating the diverse needs and concerns of the community directly affected by environmental restoration activities; and (2) chairmanship of the RAB is shared between the installation and community, promoting partnership and careful consideration of the community's concerns in the decision-making process.

In order to convert a TRC to a RAB, DoD should increase community representation, evaluate and ensure the diversity of community representation, add a community co-chair, and open meetings to the public.

## 3. Notification of Formation of a RAB

a. **Public Notice and Outreach.** Prior to establishing a RAB or converting a TRC to a RAB, DoD proposes that an installation notify potential stakeholders of its intent to form a RAB. In announcing the formation of a RAB, the installation should describe the purpose of a RAB and discuss membership opportunities.

DoD recommends that every effort be made to ensure that a broad spectrum of individuals or groups representing the community's interests are informed about the RAB, its purposes, and membership opportunities. In some cases, it may be necessary that the installation directly solicit some groups or organizations, particularly groups that may be traditionally under represented, such as low-income and minority segments of the population. It is important that RAB memberships are fairly balanced in terms of points of view represented and functions to be performed. Installations should consult the existing TRC, EPA, and state, tribal, and local government representatives

for information or other comments before providing this notice.

b. RAB Information Meeting. While not required in the proposed rule, DoD suggests that an installation sponsor an informational meeting prior to establishing a RAB. The focus of this meeting will be to introduce the concept of RABs to the community and to begin the membership solicitation process.

#### 4. Composition of a RAB

a. Membership. RAB membership shall be well balanced and reflect the diverse interests within the local community. Therefore, DoD proposes that each RAB should consist of representatives of the Military Component (the U.S. Army Corps of Engineers for FUDS), members of the community, EPA, and state, tribal, or local government representatives, as appropriate. RAB meetings will be widely publicized and open to all. Representatives of organizations and agencies who live and work outside the affected area are encouraged to voice their opinions at RAB meetings within the rules of conduct established by the RAB.

b. Government Representation. In addition to the Military Component, DoD proposes that EPA and state, tribal, and local governments should be represented on the RAB, as they fulfill important roles because of their regulatory oversight of DoD environmental restoration activities. Potential candidates may include the Remedial Project Manager (RPM) from the installation, EPA at the discretion of the EPA Administrator, as well as representatives from the state, tribal, or local government agencies. In the case of closing military installations, members of the BRAC Cleanup Team (BCT) may serve on the RAB as government representatives. It is important that any government representative chosen for RAB membership dedicate the time necessary, and have sufficient authority, to fulfill all RAB responsibilities.

Ideally, DoD believes that RABs should have only one representative from each government agency, so as to prevent an inordinate representation by government and DoD officials. While DoD encourages other government representatives to attend RAB meetings, these representatives' role will be strictly one of providing information and support.

c. Community Representation. While DoD is not proposing specific procedures to be used for selecting community members of the RAB, DoD notes that one of the most sensitive issues facing installations that establish

a RAB concerns the selection of community members. When members of the community feel the selection process for RAB members, particularly of community members, is conducted in an objective and unbiased manner, it enhances their perception that the RAB can be a credible forum for the discussion of their issues and concerns. If the selection of community members is not approached carefully, the result can be a loss of trust.

To support the objective selection of community RAB members, installations will use a selection panel comprised of community members to nominate community RAB members. The Installation Commander in consultation with the state, tribal, and local governments and EPA, as appropriate, will identify community interests and solicit names of individuals who can represent these interests on the selection panel. The panel will establish and announce the following:

- Procedures for nominating community RAB members,
- Process for reviewing community interest,
- Criteria for selecting community RAB members, and
- List of RAB nominees.

Following the panel nominations, the Installation Commander, in consultation with the state and EPA as appropriate, will review the nominations to ensure the panel fairly represents the local community. The Installation Commander will then appoint the community RAB members.

Some installations are located in close proximity to American Indian and Alaska Native communities. While DoD encourages individual tribal members to participate on RABs, RABs in no way replace or serve as a substitute forum for the government-to-government relationship between DoD and federally-recognized tribes, as defined by the most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in the Federal Register pursuant to Section 104 of the Federally Recognized Indian Tribe List Act.

RAB community members should live and/or work in the affected community or be affected by the installation's environmental restoration program. DoD will not limit participation in the RAB of potential members who have or may bid on DoD contracts, if proper and appropriate assurances to avoid any potential conflicts of interest are issued. DoD will, however, apply applicable conflict of interest rules, pursuant to the Federal Acquisition Regulation.

At closing installations, members of the LRA, as defined under BRAC, are

included as stakeholders and are encouraged to attend RAB meetings. There is not a specific requirement, however, that LRA members be invited to be a member of the RAB.

d. Chairmanship. DoD proposes that chairmanship of the RAB be shared between the installation and the community. DoD believes this will promote partnering between DoD and the community and reflect DoD's commitment to consider the community's concerns when making decisions about the environmental restoration process. Together, the installation and community co-chairs jointly will determine meeting agendas, run meetings, and ensure that issues related to environmental restoration are raised and adequately considered.

e. Compensation for Community RAB Members. DoD also is specifying in the proposed rule that the community co-chair and community RAB members are expected to serve without compensation for their services. DoD considers community membership on a RAB to be voluntary, and, therefore, DoD will not pay these members for their participation.

f. Roles and Responsibilities of Members. DoD is not proposing specific requirements concerning the roles and responsibilities of individual members of a RAB. DoD considers the issuance of such regulations to be overly burdensome to the formation and operation of RABs, and, therefore, unnecessary.

#### B. Operating Requirements

##### 1. Creating a Mission Statement

DoD proposes that each RAB should have a mission statement that articulates the overall purpose of the RAB. DoD considers this necessary to provide focus and objectives for the group. In addition, when members of the RAB understand their mission from the onset, it provides a framework for discussions. Without the framework, discussions may become hampered with issues that are not relevant to the environmental restoration process. The DoD installation co-chair in conjunction with the RAB members will determine the RAB mission statement consistent with guidance provided by the DoD Component. The mission statement should be discussed with the RAB and the DoD installation co-chair will listen to and consider the RAB members' comments before finalizing.

##### 2. Selecting Co-Chairs

DoD proposes that the installation co-chair be selected either by the Installation Commander or equivalent,



or defined by military service-specific guidance, while the community members of the RAB will select the community co-chair. DoD considers it necessary for the community members to select their co-chair to ensure their active participation in the operation of the RAB and to help ensure that the RAB can be a credible forum for discussing community issues and concerns. Public participants are not afforded the opportunity to vote for the community co-chair.

### 3. Developing Operating Procedures

DoD considers a formal and agreed-upon set of operating procedures necessary to manage the business of RABs. While DoD will allow each RAB to customize or tailor its operating procedures as it sees fit, DoD proposes that the co-chairs be responsible for the operating procedures, to include:

- Setting clearly defined goals and objectives for the RAB. These should be discussed with the RAB, and the DoD installation co-chair will listen to, consider, and provide specific responses to the RAB members' comments before finalizing the goals and objectives.
- Ensuring that an agenda is developed for RAB meetings. The agenda is considered an important organizational tool that should be developed to reflect the interests and concerns of RAB members.
- Announcing meetings.
- Establishing attendance requirements of members at meetings.
- Developing and approving procedures for the minutes of RAB meetings.
- Meeting frequency and location.
- Establishing the Rules of Order.
- Announcing the frequency and procedures for conducting training.
- Establishing procedures for selecting or replacing the community co-chair and selecting, replacing, or adding community RAB members.
- Specifying the size of the RAB membership and the periods for membership and co-chair length of service.
- Reviewing and responding to public comments.
- Establishing the participation of the public.
- Keeping the public informed about proceedings of the RAB.
- Discussing the agenda for the next meeting and issues to be addressed.

### 4. Training RAB Members

DoD is not proposing a requirement for training members of the RAB. DoD believes, however, that RAB members may need some initial orientation training to enable them to fulfill their

responsibilities. DoD recommends that the installation should work with EPA, the state, tribes, and environmental groups to develop methods to quickly inform and educate the RAB members and to promote the rapid formation of a fully functioning RAB.

DoD notes that under this proposed rule, only certain types of training will be considered within the scope of administrative support for RABs, and therefore, may be financed using funds allocated to the administrative expenses of RABs. DoD further discusses training in context of administrative support eligible for available funding in section IV.C.1.b. of this preamble.

### 5. Conducting RAB Meetings

a. Public Participation. DoD believes the meeting format of each RAB will vary and be dictated by the needs of the participants. Therefore, DoD is not proposing specific procedures for conducting RAB meetings. All RAB meetings, however, shall be open to the public. The installation co-chair should prepare and publish a timely public notice in a local newspaper of general circulation announcing each RAB meeting. Each RAB meeting will be held at a reasonable time and in a manner or place reasonably accessible to and usable by persons with disabilities. Interested persons will be permitted to attend, appear before, or file statements with any RAB, subject to such reasonable rules or regulations that may be prescribed.

b. Nature of Discussions. Regarding the nature of discussions at RAB meetings, the installation will listen and give careful consideration to all advice provided by the individual RAB members. While voting or polling the members may facilitate RAB discussions, such votes are advisory only and not binding on agency decision makers. It is a RAB's decision on how to propose and debate recommendations; and this decision should be agreed upon by the RAB. Group consensus is not a prerequisite for RAB input; each member of the RAB may provide advice as an individual.

c. Meeting Facilitator: RABs may recommend to use a trained facilitator who is a neutral third-party and is acceptable to all members of the board. The facilitator's role is to guide the RAB through a cooperative communication process in order to fulfill the group's stated purpose or agenda as easily as possible. The facilitator has no substantive decision-making authority. The facilitator focuses on the group's communication process rather than the technical content of what is discussed.

d. Meeting minutes. DoD proposes that the installation co-chair, in coordination with the community co-chair, will prepare minutes of each RAB meeting. The RAB meeting minutes will be kept and will contain a record of the persons present, a complete and accurate description of matters discussed and opinions voiced, and copies of all reports received, issued, or considered by the RAB. At the installation's discretion, a court reporter or electronic taping is allowable, whether through live transmission or video or audiotape. The accuracy of all minutes will be certified by the RAB co-chairs. Although not required, DoD recommends that the installation consider mailing copies of the minutes to all community members who attended the meeting and/or to people identified on the installation's community relations mailing list. This is to ensure dissemination of the results to community members and interested parties.

### 6. RAB Adjournment and Dissolution

In this section of the proposed rule, DoD sets forth requirements for adjourning a RAB, adjournment procedures, dissolving a RAB, dissolution procedures, reestablishing an adjourned or dissolved RAB, and public comment.

#### a. RAB Adjournment

(1) Requirements for RAB Adjournment. An Installation Commander may adjourn a RAB when there is no longer a need for a RAB or when community interest in the RAB declines.

RABs may adjourn in the following situations:

- A record of decision has been signed for all DERP sites on the installation.
- An installation has achieved response complete at all sites and no further environmental restoration decisions are required.
- An installation has all remedies in place. When all environmental restoration decisions have been made and required remedies are in place and properly operating at an installation, the RAB may adjourn or decide to become inactive. The installation (or the designated authority at closure installations) will establish a mechanism to inform the community, including former RAB members, about subsequent actions, such as long-term monitoring and five-year reviews, that may interest the RAB and allow the community to address this information as appropriate. At a minimum, the installation will provide this

information to the community through status report mailings, Web sites, or local information repositories.

- The RAB has achieved its objectives as defined in the RAB Operating Procedures.

- If there is no longer sufficient, sustained community interest, as documented by the installation with RAB community members and community-at-large input, to sustain the RAB. The Installation Commander will be responsible for reassessing community interest that could warrant reactivating or reestablishing the RAB.

- The installation has been transferred out of DoD control and DoD is no longer responsible for making restoration response decisions.

(2) Adjournment Procedures. The Installation Commander should consult with EPA, states, tribes, RAB members, and the local community, as appropriate, regarding adjourning the RAB before making a final decision. The Installation Commander should consider all responses when determining the appropriate action.

If the Installation Commander decides to adjourn the RAB, the Installation Commander will document the rationale for adjournment in a memorandum for inclusion in the Administrative record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation, and describe other ongoing public involvement opportunities that are available.

#### b. RAB Dissolution

(1) Requirements for RAB Dissolution. An Installation Commander may recommend dissolution of a RAB when a RAB is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental cleanup projects as described in IV.A.1.b. Although Installation Commanders are expected to make every reasonable effort to ensure that a RAB performs its role as effectively as possible, circumstances may prevent a RAB from fulfilling the intended purpose as described in this rule. When this occurs, the Installation Commander will make a concerted attempt to resolve the issues that affect the RAB's effectiveness. If unsuccessful, the Installation Commander may elect to recommend dissolution of the RAB. In making such a decision, if environmental restoration activities are not complete, the Installation Commander should ensure that the community involvement program detailed in the Community Relations

Plan provides for continued effective stakeholder input.

(2) Dissolution Procedures. The installation co-chair should consult with the community, EPA and state, tribal and local government representatives as appropriate, regarding dissolving the RAB. The installation co-chair should notify the RAB community co-chair and members in writing of the intent to dissolve the RAB and the reasons for doing so, and provide the RAB members 30 days to respond in writing. The installation co-chair should consider RAB member responses, and in consultation with EPA and state, tribal and local government representatives, as appropriate, determine the appropriate action.

If the Installation Commander decides to proceed with recommending the RAB for dissolution, the Installation Commander should notify the public of the proposal to dissolve the RAB and provide a 30-day public comment period on the proposal (see section d. Public Comment for further discussion). At the conclusion of the public comment period, the Installation Commander will review the public comments, consult with EPA, state, tribal and local government representatives, as appropriate, and render a recommendation.

The recommendation, responsiveness summary, and all supporting documentation should be sent via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Military Component's Environmental Deputy Assistant Secretary (or equivalent) will notify the Office of the Deputy Under Secretary of Defense (Installations & Environment) (or equivalent) of the decision to approve or disapprove the request to dissolve the RAB and the rationale for that decision.

Once the Military Component's Environmental Deputy Assistant Secretary (or equivalent) makes a final decision, the Installation Commander will document the rationale for dissolution in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation, and describe other ongoing public involvement opportunities that are available.

c. Reestablishing an Adjourned or Dissolved RAB. An installation may reestablish an adjourned or dissolved RAB if there is sufficient and sustained community interest in doing so and there are environmental restoration

activities still ongoing at the installation. Where a RAB is adjourned or dissolved and environmental restoration activities continue, the installation should reassess community interest at least every 24 months. When all environmental restoration decisions have been made and required remedies are in place and properly operating at an installation, reassessment of the community interest for reestablishing the RAB is not necessary. When additional environmental restoration decisions have to be made resulting from subsequent actions, such as long-term monitoring and five-year reviews, the installation will reassess community interest for reestablishing the RAB.

Reassessment should include, at a minimum, consultation with the chain-of-command, EPA, state, tribes, and the local community as appropriate, and a 30-day public comment period (see section d. Public Comment for further discussion). Where the reassessment finds sufficient and sustained community interest, at a previously adjourned RAB the Installation Commander should reestablish a RAB.

If there is interest for reestablishment at a previously dissolved RAB, but the Installation Commander determines that the same conditions exist that required the original dissolution, he or she will request, through the chain of command to the service component deputy assistant secretary, an exception to reestablishing the RAB. If those conditions no longer exist at a previously dissolved RAB, and there is interest in reestablishment the Installation Commander should notify the deputy assistant secretary of their recommendation for the RAB to be reestablished. The deputy assistant secretary will take the Installation Commander's recommendation under advisement and may approve that RAB for reestablishment.

Where the reassessment does not find sufficient and sustained community interest in reestablishing the RAB, the Installation Commander should document (in a memorandum for the record) the procedures followed in the reassessment and the findings of the reassessment. This document will be included in the Administrative Record for the installation.

d. Public Comment. If the Installation Commander intends to recommend dissolution of a RAB or reestablish a dissolved RAB, the Installation Commander will notify the public of the proposal to dissolve or reestablish the RAB and provide a 30-day public comment period on the proposal. The Installation Commander will notify the public of the decision through



publication of a notice in a local newspaper of general circulation and distribute the notice to community members. The installation's Public Affairs Office should have an updated mailing list. At the conclusion of the public comment period, the Installation Commander will review public comments, consult with the RAB, EPA, and state, tribal, or local government representatives, as appropriate, prepare a responsiveness summary, and render a recommendation. The Installation Commander will notify the public of the decision.

#### 7. Documenting RAB Activities

Additionally, the installation will document the relevant information on the activities of a RAB in the Administrative Record. These activities will include, but are not limited to:

- Installation's efforts to survey community interest in forming a RAB,
- Steps taken to establish a RAB where there is sustained community interest,
- How the RAB relates to the overall community involvement program, and
- Steps taken to adjourn the RAB.

The records, reports, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each RAB will be available for public inspection and copying at a single, publicly accessible location, such as the information repositories established under the installation's Community Relations Plan, a public library, or in the offices of the installation to which the RAB reports, until the RAB ceases to exist.

To the extent that RAB input is considered in a decision regarding environmental restoration activities, relevant information on the RAB activities will be included in the Administrative Record.

#### C. Administrative Support, Funding, and Reporting Requirements

##### 1. Administrative Support and Eligible Expenses

a. Administrative Support. The Installation Commander, or if there is no such Commander, an appropriate DoD official, is authorized to pay for routine administrative expenses of a RAB established at an installation (10 U.S.C. 2705(d)(3)). To implement this provision, this proposed rule requires that the installation provide administrative support to establish, operate, and adjourn a RAB, subject to the availability of funds. Securing ongoing administrative support is especially important for closing or closed installations.

DoD proposes to define the scope of activities that are unique to the establishment and operation of RABs, and therefore eligible as a RAB administrative expense.

b. Eligible Administrative Expenses. In order for an activity to be considered as an eligible RAB administrative cost, the activity must be unique to and directly associated with establishing and operating the RAB. For example, an advertisement for a RAB meeting is an eligible RAB administrative cost. However, producing a fact sheet as part of obtaining a hazardous waste storage permit under RCRA or hosting an installation open house as specified by the Community Relations Plan under CERCLA, may not necessarily be relevant to a RAB's mission statement or operations. The costs incurred in preparing and distributing such a fact sheet or holding the open house would not be considered administrative support required for a RAB.

While DoD cannot identify all possible examples of activities unique to and directly associated with establishing and operating a RAB, DoD proposes to consider the following activities as typical of administrative support required for a RAB:

- RAB establishment.
- Membership selection.
- Training if it is unique to and mutually benefits the establishment and operation of a RAB and relevant to the environmental restoration activities occurring at the installation.
- Meeting announcements.
- Meeting facility.
- Meeting facilitators, including translators.
- Meeting agenda materials and minutes preparation.
- RAB-member mailing list maintenance and RAB materials distribution.
- RAB adjournment.

Training for RAB members is considered an eligible administrative cost if it mutually benefits all members of a RAB and is relevant to the environmental restoration activities occurring at the installation. For example, if the installation were to hold an orientation training for members of a RAB, costs incurred in preparing training manuals, slides, or other presentation materials would be considered an allowable administrative expense because such training is mutually beneficial to all members of the RAB. A type of training that would not qualify as a RAB administrative support includes specialized training for an individual member of a RAB, such as an off-site workshop on building leadership capabilities. However, DoD

notes that types of training that are not eligible for funding as a RAB administrative expense may qualify and be eligible for funding as technical assistance.

RAB administrative support is for RAB purposes only. RAB administrative expenses do not include general community involvement expenses, such as preparation of public outreach materials, responses to public comment, or repository costs. RAB administrative support does not include efforts to determine community interest in forming a RAB that does not result in the actual formation of a RAB. These items will be categorized as a community involvement expense.

Additional types of expenses ineligible as RAB administrative costs include, but are not limited to:

- Salaries for DoD personnel.
- Dedicated equipment such as computers, software, facsimile machines, telephone lines, or electronic mail for community RAB members.
- Renting dedicated office space for community RAB members.
- Administrative support to community members of the RAB.
- Printed stationery and personal business cards.
- Temporary duty/travel, conference attendance, or fees, except where prior approval has been granted by DoD.
- Compensation to RAB members for meeting attendance, work hours lost, time reviewing and commenting on documents, travel to meetings, or long distance telephone calls.

c. *Funding.* The Secretaries of the Military Departments will make funds available for RAB administrative expenses (10 U.S.C. 2705(g)), subject to the availability of funds. Funds requested for environmental restoration activities that were appropriated to Military Components' ER or BRAC accounts or the ER-FUDS account may be used to provide administrative support to RABs. Such funds will not be used to support the activities of environmental groups or advisory boards in addressing issues other than environmental restoration activities. The Installation Commander is authorized to pay routine administrative expenses of the RABs, in accordance with 10 U.S.C. § 2705(d)(3). The activities of the RAB and expenditures of such funds for administrative expenses will be reported to ODUSD(I&E), at a minimum, on an annual basis.

##### 2. Technical Assistance for Public Participation (TAPP)

Community members of a RAB may request technical assistance from the

private sector to assist their understanding of the scientific and engineering issues underlying eligible DoD environmental restoration activities. Technical assistance may be made available to community members of RABs or TRCs in accordance with 10 U.S.C. 2705(e) and the TAPP regulations found at 32 CFR part 203. RABs may submit TAPP requests to the Installation Commander, or to an appropriate DoD official. The DoD installation may also provide in-house assistance to discuss technical issues.

### 3. Documenting and Reporting Activities and Expenses

DoD is required to report to Congress on the activities of TRCs and RABs (10 U.S.C. 2706(a)(2)(J)). In order to fulfill this requirement, this proposed rule requires that, where RABs are established, the installation documents the activities of the RAB and tracks expenditures for administrative expenses of the RAB. With regards to tracking expenses, DoD recommends that installations tally costs according to the specific activities identified above (see section IV.C.1.b. of this rule) that are typical of administrative support required for RAB.

Although this proposed rule requires installations to document RAB activities and track expenditures, DoD is not prescribing specific procedures to accomplish this. In addition, DoD will use internal Department and Military Component-specific reporting mechanisms to obtain required information from installations on RAB activities and expenditures when reporting to Congress.

### V. Regulatory Analysis

#### A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), as amended, DoD must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order.

DoD has determined that this proposed rule is not a "significant regulatory" action because it is unlikely to:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, environment, public health, or safety of state, local, or tribal governments or communities;

(2) Create 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 program 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.

#### B. Regulatory Flexibility Act

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The primary effect of the proposed rule will be to increase community involvement in DoD's environmental restoration program.

#### C. Paperwork Reduction Act

It has been certified that the proposed rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

#### VI. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, DoD must prepare a statement to accompany any rule where the estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, will be \$100 million or more in any one year.

DoD has determined that this proposed rule will not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector.

#### List of Subjects in 32 CFR Part 202

Administrative practice and procedure, Environmental protection—restoration, Federal buildings and facilities, Organization and functions (Government agencies).

Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, is proposed to be amended by adding part 202 to read as follows:

### PART 202—RESTORATION ADVISORY BOARDS (RABs)

#### Subpart A—General Requirements

##### Sec.

202.1 Purpose, scope, definitions, and applicability.

202.2 Criteria for establishment.

202.3 Notification of formation of a Restoration Advisory Board.

202.4 Composition of a RAB.

#### Subpart B—Operating Requirements

202.5 Creating a mission statement.

202.6 Selecting co-chairs.

202.7 Developing operating procedures.

202.8 Training RAB members.

202.9 Conducting RAB meetings.

202.10 RAB adjournment and dissolution.

202.11 Documenting RAB activities.

#### Subpart C—Administrative Support, Funding, and Reporting Requirements

202.12 Administrative support and eligible expenses.

202.13 Technical assistance for public participation (TAPP).

202.14 Documenting and reporting activities and expenses.

Authority: 5 U.S.C. 551 *et seq.* and 10 U.S.C. 2705.

#### Subpart A—General Requirements

##### § 202.1 Purpose, scope, definitions, and applicability.

(a) *Purpose.* The purpose of this part is to establish regulations regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of Restoration Advisory Boards (RABs).

(b) *Purpose and scope of responsibilities of RABs.* The purpose of a RAB is to provide:

(1) An opportunity for stakeholder involvement in the environmental restoration process at Department of Defense (DoD) installations. Stakeholders are those parties that may be affected by environmental restoration activities at the installation.

(2) A form for the discussion and exchange of environmental restoration program information between DoD installations, regulatory agencies, tribes and the community.

(3) An opportunity for RAB members to review progress, participate in a dialogue with, and provide comments and advice to the installation's decision makers concerning environmental restoration matters. Installations shall give careful consideration to the comments provided by the RAB members.

(c) *Definitions.* In this section:

(1) *Community RAB member* shall mean those individuals identified by community members and appointed by the Installation Commander to participate in a RAB who live and/or work in the affected community or are affected by the installation's environmental program.

(2) *Environmental restoration* shall include the identification, investigation, research and development, and cleanup of contamination from hazardous substances, and pollutants and contaminants.

(3) *Installation* shall include active and closing Department of Defense (DoD) installations and formerly used defense sites (FUDS).

(4) *Installation Commander* shall include the Commanding Officer or the equivalent of a Commanding Officer at active installations; the Installation Commander or other Military Department officials who close the facility and are responsible for its disposal at Base Realignment and Closure (BRAC) installations; or the U.S. Army Corps of Engineers Project Management District Commander at FUDS.

(5) *Public participants* shall include anyone else who may want to attend the RAB meetings, including those individuals may not live and/or work in the affected community or may not be affected by the installation's environmental program but would like to attend and provide comments to the RAB.

(6) *Stakeholders* are those parties that may be affected by environmental restoration activities at an installation, including family members of military personnel and civilian workers, and tribal community members and indigenous people, as appropriate.

(7) *Tribes* shall mean any federally recognized American Indian and Alaska Native government as defined by the most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in the *Federal Register* pursuant to Section 104 of the *Federally Recognized Tribe Act*.

(8) *RAB adjournment* shall mean when an Installation Commander, in consultation with the Environmental Protection Agency (EPA), state, tribes, RAB members, and the local community, as appropriate, closes the RAB based on a determination that there is no longer a need for a RAB or when community interest in the RAB declines.

(9) *RAB dissolution* shall mean when an Installation Commander disbands a RAB that is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects. Installation Commanders are expected to make every reasonable effort to ensure that a RAB performs its role as effectively as possible and a concerted attempt to resolve issues that affect the RAB's effectiveness. There are circumstances, however, that may prevent a RAB from operating effectively or fulfilling its intended purpose.

(d) *Other public involvement activities*. A RAB should complement other community involvement efforts occurring at an installation; however, it does not replace other types of community outreach and participation

activities required by applicable laws and regulations.

(e) *Applicability of regulations to existing RABs*. The regulations in this part apply to all RABs regardless of when the RAB was established.

(f) *Guidance*. The Office of the Deputy Under Secretary of Defense for Environment shall issue guidance regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs pursuant to this rule. The issuance of any such guidance shall not be a precondition to the establishment of RABs or the implementation of this rule.

#### § 202.2 Criteria for establishment.

(a) *Determining if sufficient interest warrants establishing a RAB*. A RAB should be established when there is sufficient and sustained community interest, and any of the following criteria are met:

(1) The closure of an installation involves the transfer of property to the community;

(2) At least 50 local citizens petition the installation for creation of a RAB;

(3) Federal, State, tribal, or local government representatives request the formation of a RAB; or

(4) The installation determines the need for a RAB. To determine the need for establishing a RAB, an installation should:

(i) Review correspondence files;

(ii) Review media coverage;

(iii) Consult local community members;

(iv) Consult relevant government officials; and

(v) Evaluate responses to communication efforts, such as notices placed in local newspapers.

(b) *Responsibility for forming or operating a RAB*. The installation shall have lead responsibility for forming and operating a RAB.

(c) *Converting existing Technical Review Committees (TRCs) to RABs*. In accordance with 10 U.S.C. 2705(d)(1), a RAB may fulfill the requirements of 10 U.S.C. 2705(c), which directs DoD to establish TRCs. DoD recommends that, where TRCs or similar advisory groups already exist, the TRC or similar advisory group be considered for conversion to a RAB, provided there is sufficient and sustained interest within the community.

#### § 202.3 Notification of formation of a Restoration Advisory Board.

Prior to establishing a RAB, an installation shall notify potential stakeholders of its intent to form a RAB. In announcing the formation of a RAB, the installation should describe the

purpose of a RAB and discuss opportunities for membership.

#### § 202.4 Composition of a RAB.

(a) *Membership*. At a minimum, each RAB shall include representatives from DoD and the community. RAB community membership shall be well balanced and reflect the diverse interests within the local community.

(1) *Government representation*. The RAB may also include representatives from the EPA at the discretion of the Administrator of the appropriate EPA regional office, and state, tribal, and local governments, as appropriate. At closing installations, representatives of the BRAC Cleanup Team (BCT) may also serve as the government representative(s) of the RAB.

(2) *Community representation*. Community RAB members should live and/or work in the affected community or be affected by the installation's environmental restoration program. While DoD encourages individual tribal members to participate on RABs, RABs in no way replace or serve as a substitute forum for the government-to-government relationship between DoD and federally-recognized tribes.

(b) *Chairmanship*. Each RAB established shall have two co-chairs, one representing the DoD installation and the other the community. Co-chairs shall be responsible for directing and managing the RAB operations.

(c) *Compensation for community members of the RAB*. The community co-chair and community RAB members serve voluntarily; therefore, DoD will not compensate them for their participation.

#### Subpart B—Operating Requirements

##### § 202.5 Creating a mission statement.

The DoD installation co-chair in conjunction with the RAB members shall determine the RAB mission statement in accordance with guidance provided by the DoD Component.

##### § 202.6 Selecting co-chairs.

(a) *DoD installation Co-chair*. The DoD installation co-chair shall be selected by the Installation Commander or equivalent, or in accordance with Military Service-specific guidance.

(b) *Community Co-chair*. The Community co-chair shall be selected by the community RAB members.

##### § 202.7 Developing operating procedures.

(a) Each RAB shall develop a set of operating procedures. Areas that should be addressed in the procedures include:

(1) Clearly defined goals and objectives for the RAB, as determined by

the DoD installation co-chair in consultation with the RAB.

- (2) Meeting announcements.
- (3) Attendance requirements of members at meetings.
- (4) Development and approval procedures for the minutes of RAB meetings.
- (5) Meeting frequency and location.
- (6) Rules of order.
- (7) The frequency and procedures for conducting training.
- (8) Procedures for selecting or replacing co-chairs and selecting, replacing, or adding RAB members.
- (9) Specifics on the size of the RAB, periods of membership, and co-chair length of service.
- (10) Review and responses to public comments.
- (11) Participation of the general public.
- (12) Keeping the public informed about proceedings of the RAB.
- (13) Discussing the agenda for the next meeting and issues to be addressed.

(b) [Reserved].

#### § 202.8 Training RAB members.

Training is not required for RAB members. It may be advisable, however, to provide RAB members with some initial orientation training to enable them to fulfill their responsibilities. Funding for training activities must be within the scope of administrative support for RABs, as permitted in § 202.12.

#### § 202.9 Conducting RAB meetings.

(a) *Public participation.* RAB meetings shall be open to the public.

(1) The installation co-chair shall prepare and public a timely publish notice in a local newspaper of general circulation announcing each RAB meeting.

(2) Each RAB meeting shall be held at a reasonable time and in a manner or place reasonably accessible to and usable by persons with disabilities.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any RAB, subject to such reasonable rules or regulations as may be prescribed.

(b) *Nature of discussions.* The installation shall give careful consideration to all comments provided by the individual RAB members.

(c) *Meeting minutes.* The installation co-chair, in coordination with the community co-chair, shall prepare minutes of each RAB meeting.

(1) The RAB meeting minutes shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and comments received, and

copies of all reports received, issued, or approved by the RAB. The accuracy of all minutes shall be certified by the RAB co-chairs.

(2) The records, reports, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each RAB shall be available for public inspection and copying at a single, publicly accessible location, such as the information repositories established under the installation's Community Relations Plan, a public library, or in the offices of the installation to which the RAB reports, until the RAB ceases to exist.

#### § 202.10 RAB adjournment and dissolution.

(a) *RAB adjournment.* (1) Requirements for RAB adjournment. An Installation Commander may adjourn a RAB when there is no longer a need for a RAB or when community interest in the RAB declines. RABs may adjourn in the following situations:

(i) A record of decision has been signed for all DERP sites on the installation.

(ii) An installation has achieved response complete at all sites and no further environmental restoration decisions are required.

(iii) An installation has all remedies in place.

(iv) The RAB has achieved the desired end goal as defined in the RAB Operating Procedures.

(v) There is no longer sufficient, sustained community interest, as documented by the installation with RAB community members and community-at-large input, to sustain the RAB. The installation shall continue to monitor for any changes in community interest that could warrant reactivating or reestablishing the RAB.

(vi) The installation has been transferred out of DoD control and DoD is no longer responsible for making restoration response decisions.

(2) *Adjournment procedures.* If the Installation Commander is considering adjourning the RAB, the Installation Commander shall:

(i) Consult with the EPA, state, tribes, RAB members, and the local community, as appropriate, regarding adjourning the RAB and consider all responses before making a final decision.

(ii) Document the rationale for adjournment in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation,

and describe other ongoing public involvement opportunities that are available, if the Installation Commander decides to adjourn the RAB.

(b) *RAB dissolution.* (1) *Requirements for RAB dissolution.* An Installation Commander may recommend dissolution of a RAB when a RAB is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects as described in § 202.1(b).

(2) *Dissolution procedures.* If the Installation Commander is considering dissolving the RAB, the Installation Commander shall:

(i) Consult with EPA, state, tribal and local government representatives, as appropriate, regarding dissolving the RAB.

(ii) Notify the RAB community co-chair and members in writing of the intent to dissolve the RAB and the reasons for doing so and provide the RAB members 30 days to respond in writing. The Installation Commander shall consider RAB member responses, and in consultation with EPA, state, tribal and local government representatives, as appropriate, determine the appropriate action.

(iii) Notify the public of the proposal to dissolve the RAB and provide a 30-day public comment period on the proposal, if the Installation Commander decides to proceed with dissolution. At the conclusion of the public comment period, the Installation Commander will review the public comments, consult with EPA, state, tribal and local government representatives, as appropriate, and render a recommendation.

(iv) Send the recommendation, responsiveness summary, and all supporting documentation via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Military Component's Environmental Deputy Assistant Secretary (or equivalent) shall notify the Office of the Deputy Under Secretary of Defense (Installations & Environment) (or equivalent) of the decision to approve or disapprove the request to dissolve the RAB and the rationale for that decision.

(v) Document the rationale for dissolution in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation, and describe other ongoing public involvement opportunities that are

available, once the Military Component's Environmental Deputy Assistant Secretary (or equivalent) makes a final decision.

(c) *Reestablishing an adjourned or dissolved RAB.* An Installation Commander may reestablish an adjourned or dissolved RAB if there is sufficient and sustained community interest in doing so and there are environmental restoration activities still ongoing at the installation. Where a RAB is adjourned and environmental restoration activities continue, the Installation Commander should reassess community interest at least every 24 months. When all environmental restoration decisions have been made and required remedies are in place and properly operating at an installation, reassessment of the community interest for reestablishing the RAB is not necessary. When additional environmental restoration decisions have to be made resulting from subsequent actions, such as long-term monitoring and five-year reviews, the installation will reassess community interest for reestablishing the RAB. Where the reassessment finds sufficient and sustained community interest at previously adjourned RAB, the Installation Commander should reestablish a RAB. Where the reassessment does not find sufficient and sustained community interest in reestablishing the RAB, the Installation Commander shall document in a memorandum for the record the procedures followed in the reassessment and the findings of the reassessment. This document shall be included in the Administrative Record for the installation. If there is interest for reestablishment at a previously dissolved RAB, but the Installation Commander determines that the same conditions exist that required the original dissolution, he or she will request, through the chain of command to the service component deputy assistant secretary, an exception to reestablishing the RAB. If those conditions no longer exist at a previously dissolved RAB, and there is interest in reestablishment the Installation Commander should notify the deputy assistant secretary of the recommendation for the RAB to be reestablished. The deputy assistant secretary will take the Installation Commander's recommendation under advisement and may approve that RAB for reestablishment.

(d) *Public comment.* If the Installation Commander intends to recommend dissolution of a RAB or reestablish a dissolved RAB, the Installation Commander shall notify the public of

the proposal to dissolve or reestablish the RAB and provide a 30-day public comment period on the proposal. At the conclusion of the public comment period, the Installation Commander shall review public comments, consult with EPA, and state, tribal, or local government representatives, as appropriate, prepare a responsiveness summary, and render a recommendation. The recommendation, responsiveness summary, and all supporting documentation should be sent via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Installation Commander shall notify the public of the decision.

#### § 202.11 Documenting RAB activities.

The installation shall document information on the activities of a RAB in the Information Repository. When RAB input has been used in decision-making, it should be documented as part of the Administrative Record. These activities shall include, but are not limited to:

- (a) Installation's efforts to survey community interest in forming a RAB;
- (b) Steps taken to establish a RAB where there is sustained community interest;
- (c) How the RAB relates to the overall community involvement program; and
- (d) Steps taken to adjourn, dissolve, or reestablish the RAB.

#### Subpart C—Administrative Support, Funding, and Reporting Requirements

#### § 202.12 Administrative support and eligible expenses.

(a) *Administrative support.* Subject to the availability of funding, the installation shall provide administrative support to establish and operate a RAB.

(b) *Eligible administrative expenses for a RAB.* The following activities specifically and directly associated with establishing and operating a RAB shall qualify as an administrative expense of a RAB:

- (1) RAB establishment.
- (2) Membership selection.
- (3) Training if it is:
  - (i) Unique to and mutually benefits the establishment and operation of a RAB; and
  - (ii) Relevant to the environmental restoration activities occurring at the installation.
- (4) Meeting announcement.
- (5) Meeting facility.
- (6) Meeting facilitators, including translators.
- (7) Preparation of meeting agenda materials and minutes.

(8) RAB-member mailing list maintenance and RAB materials distribution.

(c) *Funding.* Subject to the availability of funds, administrative support to RABs may be funded as follows:

(1) At active installations, administrative expenses for a RAB shall be paid for using funds from the Military Component's Environmental Restoration accounts.

(2) At BRAC installations, administrative expenses for a RAB shall be paid using BRAC funds.

(3) At FUDS, administrative expenses for a RAB shall be paid using funds from the Environmental Restoration account for the Formerly Used Defense Sites program.

#### § 202.13 Technical assistance for public participation (TAPP).

Community members of a RAB or TRC may request technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and environmental restoration activities conducted, or proposed to be conducted at the installation in accordance with 10 U.S.C. 2705(e) and the TAPP regulations found at 32 CFR part 203.

#### § 202.14 Documenting and reporting activities and expenses.

The installation at which a RAB is established shall document the activities and record the administrative expenses associated with the RAB. Installations shall use internal department and Military Component-specific reporting mechanisms to submit required information on RAB activities and expenditures.

Dated: January 19, 2005

Jeannette Owings-Ballard,  
Federal Register Liaison Officer, Department  
of Defense.

[FR Doc. 05-1550 Filed 1-27-05; 8:45 am]

BILLING CODE 3810-01-M

#### DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08-05-003]

RIN 1625-AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Houma, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.



# Draft RAB Charter Map August, 2002

- Roads
- Creeks, Rivers, Streams
- Zipcode Boundary
- 2002 Total Volatile Plume at MCL (PCE, TCE, DCE and VC)
- Former Kelly AFB Boundary
- Neighborhoods Surrounding the VOC Plume



**Note:**

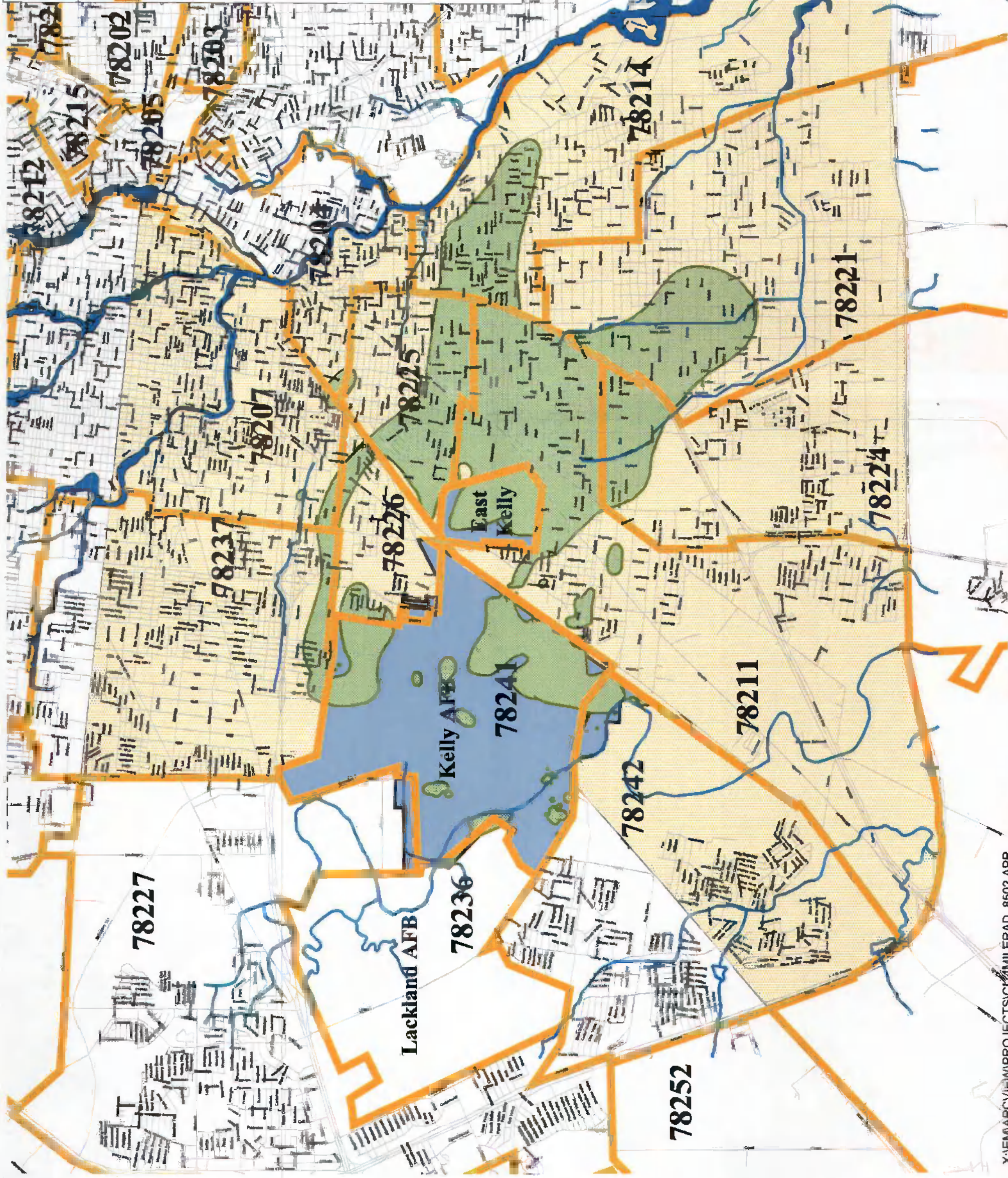
The Total Volatile Compound Plume was created using sampling data collected from wells sampled in 2001.

**Glossary of Terms:**

TNRCC: Texas Natural Resource Conservation Commission.  
 EPA: Environmental Protection Agency  
 MCL: Maximum Contaminant Level for chemical compounds in drinking water defined by the EPA and TNRCC.  
 PPB: Parts Per Billion  
 PCE: Tetrachloroethene  
 TCE: Trichloroethene  
 1,2 DCE: CIS 1,2 Dichloroethene.  
 VC: Vinyl Chloride

The MCL for PCE= 5 PPB, TCE= 5 ppb, 1,2 DCE= 70 PPB, Vinyl Chloride = 2 PPB

4000 0 4000 Feet







**DEPARTMENT OF THE AIR FORCE  
AIR FORCE REAL PROPERTY AGENCY**

**SEP 11 2006**

Air Force Real Property Agency  
143 Billy Mitchell Blvd., Ste. 1  
San Antonio, Texas 78226

Ms. Abigail Power  
Texas Commission on Environmental Quality  
14250 Judson Rd.  
San Antonio, TX  
78223-4480

See attached  
list of all letter  
recipients.

Dear Ms. Power

12 May 2006, the Department of Defense (DOD) published 32 Code of Federal Regulations (CFR) Part 202 Final Rule in the Federal Register. This Final Rule, regarding DoD Restoration Advisory Boards, implements the requirement established in 10 U.S.C. 2705(d)(2)(A), which requires the Secretary of Defense to prescribe regulations regarding Restoration Advisory Boards (RABs). The regulations in the Final Rule apply to all RABs; and establish the general, operating, and administrative support, funding and reporting requirements of RABs.

During the 12 September 2006 Special RAB Meeting, the RAB will discuss the Final Rule and the two areas of the Kelly RAB Charter, as amended 29 July 1998 which directly conflict with it. These areas are: (1) community RAB member eligibility; and (2) community RAB member appointment process.

The Final Rule defines community RAB members as "those individuals identified by community members and appointed by the Installation Commander to participate in a RAB who live and/or work in the affected community or are affected by the installation's environmental restoration program."

Based on our records, several current Kelly RAB members may not meet the eligibility requirements established in the Final Rule for RAB membership. We are requesting all Kelly RAB members verify their information to assist us in filling currently vacant positions, seats up for appointment Dec. 31, 2006, and any which may currently be occupied by ineligible members. RAB members are being asked to provide updated information by Sept. 29, 2006.

The Air Force recognizes the importance of public involvement in our environmental program and encourages participation in the Kelly RAB. We recognize that many of the current Kelly RAB community members have been part of the RAB since its inception and that a change in eligibility may cause some concern. Representatives of organizations and agencies who live and work outside the affected area are encouraged to voice their opinions and actively participate at RAB meetings, but will not be RAB members.

The Final Rule requires the Air Force to establish a selection panel of community members that represent community interests to establish the procedures for nominating community RAB members, the process for reviewing community interest, and criteria for selecting community RAB members. This panel will then transmit the list of RAB nominations to my office for appointment.

I am seeking your input to identify individuals to represent community interests as members of the RAB selection panel. We have identified the following categories of community interests and ask that you submit the names of individuals you believe represent these interests and/or recommend other interests to be represented on the RAB selection panel.

- Area homeowners (such as neighborhood and homeowner association members)
- Area businesses (such as members of the South San Antonio Chamber of Commerce)
- Area workers (such as those working both "on" and "off" the former Kelly Air Force Base)
- Area schools (such as South San Antonio Independent School District representatives)
- Other area interests

I will review the input provided by your office along with that of the Texas Commission on Environmental Quality and U.S. Environmental Protection Agency to form a selection panel that fairly represents the interests of the local community.

The following outlines the Air Force's timeline for establishing the selection panel, approving/rejecting nominations, and seating the new RAB members in sufficient time to provide training for RAB members for the 2007 calendar year.

Identification of selection panel members	September 2006
Solicitation of interest for panel members	September/October 2006
Convene and familiarize selection panel	October 2006
Accept/Reject panel nominees	October 2006
Training for RAB members	January 2007
Convene Quarterly RAB meeting	January 2007

I appreciate your commitment to and support of the Kelly Restoration Advisory Board and look forward to receiving your input for the Kelly RAB selection panel. Names of individuals you feel would serve the interests of the local community on the selection panel or other areas of interest can be submitted by phone, email, or mail. Please contact Sonja Coderre, AFRPA public affairs officer through the most convenient avenue for you.

Telephone: (210) 925-0956 or Fax: (210) 925-3636

Email: [sonja.coderre@afropa.pentagon.af.mil](mailto:sonja.coderre@afropa.pentagon.af.mil)

Mail: AFRPA, 143 Billy Mitchell Blvd., Ste. 1, San Antonio, Texas 78226

Selection panel recommendations will be accepted through 29 September 2006. We will contact the individuals/groups to determine their willingness and ability to participate on the selection panel.

Thank you for your participation and support of the Kelly Restoration Advisory Board.



Sincerely

A handwritten signature in cursive script that reads "Adam Antwine".

ADAM ANTWINE  
Senior Representative

Attachments:

1. 32 CFR Part 202 Final Rule, Department of Defense Restoration Advisory Boards, 12 May 2006
2. 32 CFR Part 202 Proposed Rule, Department of Defense Restoration Advisory Boards, Preamble, 28 January 2005
3. Kelly Air Force Base Restoration Advisory Board Charter, as amended, 29 July 1998

cc: Kelly Restoration Advisory Board Members

**FINAL PAGE**

**ADMINISTRATIVE RECORD**

**FINAL PAGE**