



KELLY AFB
TEXAS

ADMINISTRATIVE RECORD
COVER SHEET

AR File Number 3245

Kelly Restoration Advisory Board (RAB)
Workshop Agenda
Tuesday, March 9, 2004, 6:30 p.m.
Greater Kelly Development Authority (GKDA)
143 Billy Mitchell, Suite 6

RAB Co-chairs

Mr. Ruben Peña, Community Mr. Adam Antwine, AFRPA

Workshop Goals

The RAB will:

- Review and discuss the RAB Guidelines

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| I. | <u>Roll call: 6:30 p.m.</u> | Mr. Ruben Peña |
| | - Community Co-chair convenes the meeting | |
| | - Welcome and introductions | |
| | - Discuss goals for this meeting | Dr. David Smith |
| II. | Explanation of draft revised proposed RAB rule | Dr. David Smith |
| III. | Break | |
| IV. | Discussion of impacts of current RAB charter | RAB members |
| V. | Meeting wrap-up | Dr. David Smith |
| | - Action items will be addressed during next regular RAB meeting scheduled for Tuesday, April 26, 2004, at 6:30 p.m. at Kennedy High School | |
| | - Next TRS meeting scheduled for Tuesday, June 8, 2004, at 6:30 p.m. at the Environmental Health and Wellness Center | |

Draft
Restoration Advisory Board (RAB) Workshop Meeting Minutes
Former Kelly Air Force Base, TX
Greater Kelly Development Authority

March 9, 2004

Attendees:

Mr. Ruben Peña, RAB Community Co-Chair
Mr. Daniel Gonzales, RAB Community Representative
Mr. Rodrigo Garcia, RAB Community Representative
Ms. Sandra Converse, RAB Community Representative
Mr. Mike DeNuccio, RAB Community Representative
Mr. Michael Sheneman, RAB Community Representative
Mr. Pete Muzquiz, RAB Community Representative
Ms. Esmeralda Galvan, RAB Community Representative
Mr. Henry Galindo, RAB Community Representative
Ms. Carol Vaquera, RAB Community Representative
Mr. Adam Antwine, RAB Government Co-Chair, Air Force Real Property Agency (AFRPA)
Mr. Douglas Karas, AFRPA
Mr. Gary Martin, Greater Kelly Development Authority (GKDA)
Ms. Kyle Cunningham, San Antonio Metropolitan Health District (SAMHD)
Mr. Gary Miller, U.S. Environmental Protection Agency (EPA)
Mr. Mark Weegar, Texas Commission on Environmental Quality (TCEQ)
Mr. Tim Sueltenfuss, Booz Allen Hamilton (Booz Allen)
Ms. Robyn Thompson, Booz Allen
Ms. Megan Mabee, Booz Allen
Ms. Susan Hook, Booz Allen
Dr. David Smith, Smith/Associates (Facilitator)
Ms. Brittany Watts, Smith/Associates

Introductions

The workshop began at 6:30 p.m. Mr. Ruben Peña welcomed all the RAB members to the special workshop meeting. He stated that no motions would be accepted as the purpose of the meeting is strictly to review and discuss the RAB guidelines and the operating guideline revision process. He reviewed the contents of the materials packets, which included the Draft RAB Rule and the Draft Operating Guidelines.

Explanation of Draft Revised Proposed RAB rule

Dr. David Smith stated that this workshop was developed to provide RAB members with an opportunity to address issues related to RAB operating guidelines that have arisen over the past year. He briefly reviewed guidance documents with the RAB. He stated that when RABs were originally formed, they followed a set of implementation guidelines established in 1994 for Technical Review Committees (TRCs). As the RAB progressed, an effort emerged to increase the level of community involvement and expand the scope of the RAB beyond just technical review.

Dr. Smith explained that the Department of Defense (DoD) is offering an opportunity for RAB members and co-chairs to comment on the *Draft Revised Proposed RAB Rule, January 2004*

before it is published in the Federal Register. He stated that there are a few, relatively minor differences between the former guidelines and the *Draft Revised Proposed RAB Rule*. Dr. Smith again noted that the goal of this workshop was to develop a set of operating guidelines to streamline the continuing operations of the Kelly RAB. He mentioned that the *Draft Revised Proposed RAB Rule* addresses three areas: mission, purpose, and operating procedures.

Dr. Smith suggested that it would be appropriate to reexamine the Technical Review Subcommittee (TRS) guidelines while conducting this review. He noted that TRS membership, voting procedures, and designation of a quorum were all areas that required further clarification. He added the main goal for everyone present should be to identify approaches for improving the current operating guidelines.

Mr. Ruben Peña interjected that goals should be developed and added to the mission statement. He then asked each attendee to suggest areas upon which they would like to focus when revising the current operating guidelines.

Mr. Pete Muzquiz indicated that he would like to focus on getting positive news coverage concerning the cleanup and redevelopment. He said the media have always been quick to judge the Air Force and their attempts at cleaning up the former base. He wants the RAB to use their resources to gain positive press about Kelly and the RAB's role in the cleanup process.

Mr. Mark Weegar, a RAB member since 1998, stated that his interest is in addressing questions about the cleanup process and focusing on restoration-related issues. He said that issues have arisen lately that have been outside of the scope of the RAB, and he wants the operating guidelines revised to encourage RAB members to focus primarily on restoration. He stated that this is the only way to complete the mission of the RAB and potentially dissolve it in the future.

Mr. Mike DeNuccio stated that he agreed with Mr. Muzquiz and Mr. Weegar. He added that his goal for the RAB is to focus on transferring property to the Greater Kelly Development Authority (GKDA) and bringing more businesses and restaurants to the area.

Mr. Gary Miller said his goal as an EPA representative is for Kelly to be redeveloped. He also would like to see the RAB focus on restoration issues.

Mr. Gary Martin stated that he would like for the RAB to address operating procedures for the TRS and RAB-related subcommittees.

Ms. Esmeralda Galvan said the RAB needs to take positive steps towards furthering the cleanup of the shallow groundwater in the community. She stated that the RAB should continue to ask questions of the Air Force about soil and groundwater contamination. Ms. Galvan said she worries about the health impacts on community members. She also asked about the status of the Permeable Reactive Barrier (PRB) that is to be installed on Commercial Street. Ms. Galvan went on to ask how one can even think of dissolving the RAB.

Ms. Carol Vaquera asked if the PRBs ever need to be replaced. Mr. Peña replied that her question would have to be addressed at a later time because it did not deal with the issues the board was currently discussing.

Mr. Michael Sheneman stated that tours might be an opportunity for positive media coverage. Mr. Adam Antwine replied that AFRPA currently conducts approximately two to three tours per week.

Mr. Daniel Gonzales suggested that the Board should re-evaluate the community to see what information materials they need. He stated that the Board should always be looking for ways to inform the community of the cleanup. Mr. DeNuccio suggested that the RAB could contact one of the San Antonio City Council members to communicate the Kelly cleanup message via the council member's weekly television segments.

Ms. Sandra Converse requested that the Air Force brief the RAB on the cleanup timeline and status of progress. She said this might clarify many questions people have about the cleanup progress. She then asked Mr. Peña to clarify the distinctions between a TRC and a RAB. Mr. Antwine clarified that the TRCs were in existence before RABs and some TRCs were converted into RABs.

Ms. Converse asked if the goal of the RAB were to focus just on cleanup issues or if it includes health and safety issues as well. She added that she would like to see the Air Force partner with schools in the area, so children can be exposed to science and health issues at an early age.

Mr. Rodrigo Garcia read a list of goals he had drafted for the RAB to consider as part of the operating guidelines revision process. He stated that he has been working with Congressman Ciro Rodriguez on a number of issues. Mr. Garcia and Ms. Galvan both voiced concerns about the lack of recent health studies and asked how the environmental health screenings are conducted. Ms. Kyle Cunningham replied that the SAMHD conducts the tests in phases. She said that the Phase II and III results should be presented to the RAB soon. She added that experienced environmental nurses are available to aid in the screening process.

Mr. Peña asked everyone to look at their copy of the current RAB charter. He said he thinks the current mission statement is too long and repetitive. He said the Statement of Purpose is also repetitive and all these should be rewritten to include the group's goals. Mr. Miller said he thought this idea was fine, but the group needs to focus on Section 2.3, which talks about the environmental cleanup and reuse of property.

Ms. Converse asked why buildings at Kelly were not being used for restaurants or businesses. Mr. Weegar replied that many of the buildings have had to be demolished because the military was not required to meet city code regulations. Many of the remaining buildings need to be renovated or brought into compliance with city codes before they can be occupied by new tenants. Ms. Galvan asked if there were buildings that were condemned and destroyed because of contamination. Mr. Antwine replied that there has never been a building condemned at Kelly due to contamination.

Mr. Peña asked all RAB members to decide whether they wanted to rewrite the mission statement this evening or delegate a charter committee to do it on their own time and present their draft to the RAB at the April meeting.

Discussion of impacts of current RAB charter

Mr. Peña explained that RAB members could send individual comments about the *Draft Revised Proposed RAB Rule* to the DoD contact listed on the document cover page. He recommended

that those members who would like to recommend alterations to the *Draft Revised Proposed RAB Rule* should do so individually to allow the group time to focus on revising the Kelly RAB operating guidelines.

Ms. Converse said she feels that her time on the RAB would be best spent determining if there is a link between the past contamination and the current health problems in the community near Kelly. She stated that many people in the room focus on the past, and this can keep the RAB from moving forward and meeting current objectives.

Mr. Peña encouraged the Board members to establish a committee of five people to rewrite the operating guidelines mission statement and purpose. He said he thinks this group should only consist of community members who would meet on their own time to revise the charter, and then submit their draft to the board at the April RAB meeting. Mr. Miller stated that this subcommittee should remain cognizant of DoD guidelines outlined in the *Draft Revised Proposed RAB Rule* as they conduct these revisions.

Mr. Gonzales said it is important for the RAB members to make public comments on the *Draft Revised Proposed RAB Rule* as this may influence the final version of the document. He added that this rule currently limits the RAB's focus to restoration.

Mr. Peña reiterated that the operating guidelines revision subcommittee will reconsider the mission statement, purpose, goals, and objectives of the current RAB charter. Mr. Garcia and Mr. Muzquiz volunteered to be on the subcommittee. Mr. Peña appointed Mr. DeNuccio to participate as well. Mr. Peña asked the community involvement contract support staff to solicit participation from other Board members to fill the last two positions.

Mr. Peña concluded the meeting at 9:10 p.m.

DRAFT Revised
Proposed RAB Rule

January 2004

Department of Defense 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 purpose of a RAB is to facilitate public participation in DoD environmental restoration activities at active and closing DoD installations and formally used defense sites where local communities express interest in such activities. The proposed regulations are based on DoD's current policies for establishing and operating RABs, as well as DoD's experience over the past eight years in using RABs.

DATES: Comments on this proposed rule must be submitted on or before **DATE TBD**.

ADDRESSES: Comments on this proposal should be sent to the following address:

Office of the Assistant Deputy Under Secretary of Defense
(Installations and Environment)
3400 Defense Pentagon
Washington, DC 20301-3400

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: TBD.

FOR FURTHER INFORMATION CONTACT:

Ms. Patricia Ferree, Office of the Deputy Under Secretary of Defense (Installations and Environment), at (703) 695-6107.

SUPPLEMENTARY INFORMATION:

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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 at 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, 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. Although RABs provide advice and 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, 2002, DoD reported the existence of 299 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 environmental and resource 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 prescribed 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 eight 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 among DoD, regulatory agencies, 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 and give meaningful consideration 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 only issues associated with environmental restoration activities under the DERP at DoD installations. 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 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. 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 will prepare detailed 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 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.

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 fund is used to pay for RAB administrative expenses at FUDS. At BRAC installations, BRAC funds are 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 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 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 and give meaningful consideration to the recommendations provided by individual RAB members. Consensus is not a prerequisite for RAB member recommendations.

A RAB may address only issues associated with environmental restoration activities under the DERP at DoD installations. 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 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 meaningful 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).
- *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.
- *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 efficiently 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 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 Assistant 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 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 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. 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, 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.

Where RABs are not formed initially, installations should reassess community interest at least every 24 months. 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.

b. Responsibility for Forming and Operating a RAB. Once the installation determines that a RAB must 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 designate 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 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 meaningful 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 underrepresented, 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 should 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, members of the community, EPA, and state, tribal, or local government representatives, as appropriate.

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.

Many 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. DoD will not preclude RAB membership to individuals who are party to a lawsuit against the federal or state government concerning the installation or any of its activities if the individual identifies the fact that he or she is a party to such a lawsuit, agrees not to use any information obtained through their position on the RAB in the lawsuit, and certifies that he or she can fairly represent the interest of the community on whose behalf he or she was selected rather than their own interest in the lawsuit.

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 Members of the RAB. 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 outset, 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. 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.

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 areas that may be addressed in the operating procedures include:

- Clearly defined goals and objectives for the RAB. The DoD installation co-chair will determine the RAB goals and objectives. These should be discussed with the RAB, and the DoD installation co-chair will listen to and consider the RAB members' comments before finalizing the goals and objectives.
- Announcing meetings
- Attendance requirements of members at meetings
- Development and approval procedures for the minutes of RAB meetings
- Meeting frequency and location
- Rules of Order
- The frequency and procedures for conducting training
- Procedures for selecting or replacing the community co-chair and selecting, replacing, or adding community RAB members
- Specifics on the size of the RAB membership and the periods for membership and co-chair length of service
- Review and responses to public comments
- Participation of the public
- Keeping the public informed about proceedings of the RAB.

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.¹

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

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

conducting RAB meetings.² All RAB meetings, however, should 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 meaningful consideration to all advice provided by the individual RAB members. While voting or polling the members may facilitate RAB discussions, such votes should be advisory only and not binding on agency decision makers. Group consensus is not a prerequisite for RAB input; each member of the RAB should provide advice as an individual.

c. Meeting minutes. DoD proposes that the installation co-chair, in coordination with the community co-chair, will prepare detailed 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 approved 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.

Any of the following situations are an indication that it may be appropriate to adjourn the RAB:

- 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 cleanup 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.

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

- A RAB may become inactive or adjourn 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 will continue to monitor for any changes in community interest that could warrant reactivating or reestablishing the RAB.
- The installation has transferred some or all of its environmental restoration role and responsibility to other entities, such as in the case of privatization, guaranteed-fixed price contracts, and early transfer.

(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 dissolve 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 efficiently 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 adjourn 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 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. 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, 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 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 a decision is made to dissolve a RAB or reconstitute a dissolved RAB, the Installation Commander will notify the public of the proposal to dissolve or reconstitute 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 Information Repository. 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.

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.

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.

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 should 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 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 this rule) 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 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. 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, definitions, and applicability.

202.2 Criteria for establishment.

202.3 Notification of formation of a Restoration Advisory Board (RAB).

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**Sec. 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 forum for the discussion and exchange of environmental restoration program information between DoD installations, regulatory agencies, and the community.

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

(c) Definitions. In this section:

(1) *Installation* shall include active and closing Department of Defense (DoD) installations and formerly used defense sites (FUDS). (2) *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.

(3) *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.

(4) *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.

(5) *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 efficiently 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 efficiently 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 Assistant 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.

Sec. 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 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.

Sec. 202.3 Notification of Formation of a Restoration Advisory Board (RAB).

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.

Sec. 202.4 Composition of a RAB.

- (a) Membership. At a minimum, each RAB shall include representatives from DoD and the 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. RAB community members should live and/or work in the affected community or be affected by the installation's environmental restoration program.
- (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 members serve voluntarily; therefore, DoD will not compensate them for their participation.

Subpart B—Operating Requirements**Sec. 202.5 Creating a mission statement.**

The DoD installation co-chair in conjunction with the RAB members shall determine the RAB mission statement.

Sec. 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 members of the RAB.

Sec. 202.7 Developing operating procedures.

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) Announcing meetings.
- (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.

Sec. 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 Section 202.12 of this rule.

Sec. 202.9 Conducting RAB Meetings.

- (a) Public participation. RAB meetings shall 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.
 - (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 meaningful 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 detailed 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.

Sec. 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. Any of the following situations are an indication that it may be appropriate to adjourn the RAB:
 - (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 cleanup 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 transferred some or all of its environmental restoration role and responsibility to other entities.
 - (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 dissolve 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 Section 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. Where the reassessment finds sufficient and sustained community interest, 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.

(d) Public comment. If a decision is made to dissolve a RAB or reconstitute a dissolved RAB, the Installation Commander shall notify the public of the proposal to dissolve or reconstitute 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.

Sec. 202.11 Documenting RAB activities.

The installation shall document information on the activities of a RAB in the Information Repository. 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 the RAB.

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**Sec. 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.

Sec. 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.

Sec. 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: DATE TBD

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

(info to be updated)

Kelly Air Force Base Restoration Advisory Board

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

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;
- 2.4.3 Collecting information regarding restoration priorities at Kelly Air Force Base;
- 2.4.4 Addressing land use, level of restoration, acceptable risk, waste management and technology development issues related to environmental restoration at Kelly Air Force Base; and
- 2.4.5 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 Member's 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 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.

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 request 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 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 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.
- 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 provided 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)

**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.

CHARTER DISCUSSIONS

Date of Minutes

15 November 1994

Section 3 of proposed charter had been changed to read "211 SARA."

Members were asked for their permission to list their phone numbers on the members contact list. The list will be provided to the public.

Charter was discussed and approved.

The charter was reinforced on several occasions to indicate the RAB is established to focus on IRP clean-up activities.

12 December 1994

Charter was signed by all members present.

30 January 1995

Nothing reported.

06 March 1995

Potential Conflict of Interest Discussion

17 April 1995

Discussion of revised RAB Application/Charter. Mr. Quintanilla objected to the wording "RAB was not a decision-making body."

Mr. Quintanilla took exception to the wording "members would not be paid." It was agreed this would be clarified to read "no wages but administrative needs of the RAB would be funded."

RAB voted to have a subcommittee to determine and make appropriate changes for the above issues.

Further issues of application and charter rewrite were tabled pending review and a report from the subcommittee.

12 June 1995

Mr. Quintanilla presented the subcommittee report (third draft complete). Sections of the charter modified included: Purpose and Function; Conflict of Interest; Appeals Process; and Reporting of Spills and Significant Environmental Incidents. Final draft mailing scheduled for late June. The charter modifications will be voted upon during the September meeting.

21 August 1995

Mr. Quintanilla presented the Charter Committee report. Extensive corrections were made to the minutes regarding the charter (see attached under 21 Aug 95).

Mr. Quintanilla proposed additional changes.

The RAB accepted the report with the following changes:

Redesignate Section 2B to 2C and insert a new 2B listing when Kelly AFB would consult and seek the board's advice.

4A: Members must reside or work in Bexar County or Kelly AFB.

4D: Members can resign by orally telling a co-chair.

4Ib: Right of designated representative of the RAB to have an audience with installation commander if requested by either party.

5D Quarterly meetings. Quorum is 50 percent of members.

5H Covered submitting written comments on subject documents.

5K Notifying RAB of all reportable spills prior to review of meeting minutes.

25 September 1995

Mr. Quintanilla submitted proposed charter changes. The Board approved motion to accept changes. Vote on complete charter scheduled for next meeting.

13 November 1995

Charter was submitted for signature. Several RAB members had problems with the provision covering removal of members and conflict of interest.

RAB voted removal will be by the majority vote of the RAB's quorum.

Conflict of interest wording briefed by Ms. Williams:

Members not eligible to vote on issues where they will realize personal or financial gain.

To be "dealt with on case-by-case basis."

Examples: Claim against Air Force on environment issues before the board.

Working for a firm doing environmental work for
Kelly AFB

Vote:

Motion to open consideration of charter issues in addition to member removal and conflict of interest - Failed.

Motion to approval charter as is - Failed.

Motion to approval charter except for the two sections at issue - Passed.

11 December 1995

The Board approved new charter. It will take effect next meeting, excluding Sections G, H, and I which deals with Conflict of Interest. These sections and the conflict of interest issue will be handled at a later meeting.

Board approved a motion to waive the requirement to read changes to the charter at one meeting and approve them at the next meeting.

Mr. Quintanilla informed RAB of his claim against the Air Force. Mr. Quintanilla said he would abstain from discussions and decisions concerning the property.

Ms. Solis inquired if any one else had a conflict of interest. No one raised their hand.

05 February 1996

Mr. Quintanilla resigned as charter subcommittee chairman. Mr. Hagelthorn was voted as chairman, with Mr. Rice as the alternate.

18 March 1996

Nothing reported.

08 May 1996

Nothing reported.

18 June 1996

Mr. Hagelthorn asked for input on charter changes by 25 July 1996.

New guidance on RAB needs to be incorporated in the existing charter.

Mr. Quintanilla asked for clarification on the question "Is the RAB a decision-making body?" Mr. Hagelthorn responded "not according to law."

Mr. Quintanilla said conflict of interest needs to be addressed. Since TNRCC is funded by the Air Force, this is a conflict of interest.

27 August 1996

16 September 1996 charter subcommittee meeting announced. Membership renewals to be discussed.

18 November 1996

Major presentation on proposed changes to the charter to be discussed.

Membership - expanded area of membership:

Mr. Quintanilla opposed vigorously.

It was pointed out that the RAB must ratify new members.

Motion passed (9 to 5).

Membership terms:

Mr. Quintanilla felt any one could nominate themselves.

Mr. Culbertson didn't think there were enough community representatives.

Mr. Roberson didn't think this change would affect RAB.

Motion passed (13 to 1).

Government co-chair:

No discussion, motion passed (14 to 0).

RAB size to 23:

Motion passed (12-2).

28 April 1997

Ms. Peace proposed the charter subcommittee discuss increasing the size of the RAB. Meeting to be held before the next RAB meeting.

15 Nov 1994 - Charter

**Restoration Advisory Board
Meeting Minutes - 15 Nov 94**

Mr. Bailey welcomed all of the attendees and congratulated those who had volunteered to serve on the Restoration Advisory Board (RAB). He stated that the RAB, was a Department of Defense (DOD) initiative designed allow the regulatory and public community to become stakeholders in the clean-up of DOD. The Installation Restoration Program (IRP) is the United States Air Force's program for accomplishing Kelly AFB's clean-up activities, through the Environmental Management Office. He also stated that this was the first RAB to be established at any of the Air Logistics Centers (ALC). After his welcoming comments, the following were briefly discussed among the board members:

- Review responsibilities of RAB members and/or their alternates, when reviewing contractor documents, and how RAB member comments and feedback will be handled by the board.
- Section 3 of the proposed charter in the information package had been changed to read "211 SARA". Board members were instructed to inform Mr. Estrada whether or not they wanted their and their alternate's home phone numbers or business phone numbers on the members contact list that will be provided to the public.
- As a result of the diverse background of the board members and the anticipated learning curve required to allow them to become familiar with Kelly's clean-up program, the board decided to meet at least monthly. The board decided that the next meeting should be held before 19 December 94. An invitation to attend a tour of Kelly AFB prior to the next meeting was given to everyone by Mr Bailey.
- The RAB charter was discussed and approved. The RAB meeting facilitator, Mr Teague, an employee of SAIC was introduced and assumed responsibility for proceduly electing a Co-Chair of the RAB. Five (5) individuals had volunteered to serve as Co-Chair for the RAB. They were: Mr. Ayala, Mr. Mixon, Mr. Haglethorn, Mr. Moore, and Mr. Jimenez, who was not present. Each was invited to give a brief biography of themselves. By secret ballot, Mr Haglethorn was elected as Co-Chair to serve along with Mr Bailey.

After the meeting break, Mr. Richard Trevino, Chief of the Environmental Management Restoration Operations Branch, gave a basic overview of IRP program at Kelly AFB. During his presentation, he briefly addressed issues related to underground storage tanks, questions on history of clean-up program, accomplishments of IRP program and rationale for the establishing the RAB. The charter of the RAB was reinforced on several occasions to indicate that currently the RAB is established to focus on IRP clean-up activities. As requested, specific points of contact with respect to the different zones being investigated on Kelly AFB is provided by attachment.

12 Dec 1994 - Charter

**RESTORATION ADVISORY BOARD
MEETING MINUTES**

December 12, 1994

1. Restoration Advisory Board (RAB) held its monthly meeting on December 12, 1994 at the Fire Training Academy, 4531 S. Zarzamora. The meeting began at 6:00 PM and concluded at 9:00 PM.

2. The topics of discussion include the following:

a. The welcome was provided by Mr. Bailey (Kelly AFB Co-Chair), who stated that Mr. Hagelthorn (Community Co-Chair) will not be able to attend the RAB meeting, thereby the Community Co-Chair would not be presiding over this meeting. Mr. Bailey offered three alternatives for conducting the meeting:

(1) The RAB members assign a Co-Chair for this meeting,
(2) The RAB members assign a Permanent Co-Chair Alternate, and
(3) The RAB members assign Mr. Bailey to preside over this meeting. (The RAB members decided that Mr. Bailey would preside over the meeting.)

b. Mr. Bailey presented to the RAB the applications of two individuals requesting membership on the Kelly RAB. The two individuals are Ms. Jessie Bankston and Mr. Gene Lene' of St. Mary's University. Mr. Lene' was present for this RAB meeting. After review of the applications, the two individuals were approved in accordance with the Charter for membership on the Kelly RAB.

c. Reporter Jessie Degollado from Channel 12, KSAT-TV, was present with a live report during the initial segment of the RAB. She requested an interview with a volunteer among the RAB members from the community. Mr. Bailey offered the opportunity and proposed a short break. However, no one volunteered and the interview was not conducted.

d. Mr. Bailey circulated two documents requiring action by the RAB members. The first document was the RAB Public Contact Listing. Each RAB member present reviewed and corrected the information, where appropriate. This listing is to be made public so that the community can make contact with RAB members. The second document was the RAB Charter, which every RAB member present signed.

e. Mr. Bailey introduced Richard Trevino, chief of the Restoration Operations Branch, who provided an overview on the Installation Restoration Program (IRP) which included the following subjects:

(1) Proposed two dates to conduct an on-site workshop for the RAB, which will provide the members a better understanding of the scope and responsibilities of the

D. Potential Conflict of Interest - Letter to RAB Members

Mr. Bailey started discussion in reference to a letter sent to all RAB members regarding who can be a RAB member, potential for Conflict of Interest, and a potential revision to the RAB Charter.

In response to questions for clarification of the issues involved, Mr. Bailey introduced Ms. Adrienne Williams of the Kelly Air Force Base legal office. Ms. Williams responded to several hypothetical questions. She explained that "The essence of what we are trying to do is to ensure that the RAB member is not a contractor for Kelly and will not [be] in the future . . ."

Mr. Bailey proposed that the minutes of this meeting include specific, possible language for such a change for the RAB Charter so that RAB members will have time to review and prepare to discuss the language at the next RAB meeting. The members voted and passed this suggestion by show of hands.

NOTE: The Draft proposed RAB Charter modification language is attachment 3.

E. Topics to be Discussed at Future RAB Meetings**• Legal Standards for Cleanup**

Pursuant to Mr. Haglethorn's request, from the last RAB meeting, (for a discussion and briefing concerning cleanup standards), Mr. Bailey asked Ms. Williams to explain Kelly's action in response to his request.

Ms. Williams explained that the Texas Natural Resource Conservation Commission (TNRCC) has authority in this area. To better respond to the request, a legal representative from the TNRCC has accepted Kelly's invitation to come to the next RAB meeting to discuss the standards and the process.

Mr. Quintinilla asked if the TNRCC representative would discuss "right of capture" regarding groundwater. Mr. Bailey indicated that Kelly would make sure that the TNRCC representative is aware of that interest.

Mr. Quintinilla raised an issue about damage to foundations as a result of "water being taken from the ground aquifer". Mr. Bailey agreed to provide name and phone number of a contact at KAFB, who handles claims. This information will be included in minutes and in the next mailing.

Kelly Contact for all community activities is:

Michael Estrada
Community Involvement Coordinator
807 Buckner, Suite 1
Kelly AFB TX, 78241-5842

At this point, Mr. Bailey deferred discussion of agenda item II. F. (post-meeting discussions from last meeting) until the end of the meeting. He then introduced Mr. Richard Trevino who presented two briefings, agenda items III. and IV.

such spills were properly a matter for RAB consideration. Mr. Quintanilla cited 10 USC 2705 in support of his contention that these matters were proper for RAB consideration and review. Mr. Teague pointed out that recent amendments may have changed that somewhat. Mr. Trevino pointed out that the RAB's focus is on restoration activities under the Air Force's IRP (counterpart to CERCLA) and therefore did not formally include recent spills, only restoration activities under the IRP. Mr. Quintanilla maintained his contention that such spills should be matters for the RAB. The issue was not settled: however, it was agreed that the minutes did, in fact, reflect what was discussed at the previous RAB meeting. Since post-meeting discussions can not be a part of the record included in the meeting minutes, the minutes would stand as written and these minutes would reflect this discussion.

- Lastly, Mr. Quintanilla restated a request for information concerning minority contracting awards in the environmental program at Kelly Air Force Base. Mr. Quintanilla referenced Executive Order 12580 in supporting this request. In the ensuing discussion, Kelly representatives maintained that information regarding minority or small business status was kept only for prime contractors, not their subcontractors. One exception is that subcontractors involved in off-base drilling are identified and listed in the Kelly Progress Reports, as a means of informing the community who is working in the community in connection with the Kelly IRP. Mr. Quintanilla maintained, however, that "... who does the work, when it's done, where it's done ... is all part ... this particular board." The issue was not resolved.

There being no further comments regarding the minutes, Mr. Thomas Moore made a motion, seconded by Ms. Joan Falkenberg, to approve the minutes with the stated corrections. The minutes were approved as corrected.

B. Membership Issues

- Approval of new members (Agenda Item II. B. 1.)

Approval consideration for Mr. Tom Smith and Ms. Lexia Ribeiro was carried over from the previous RAB meeting. Mr. Tom Smith was present and was given an opportunity to present any information that the RAB requested. In response to a request from Mr. Rice, Mr. Smith informed the board that he had been a policeman in Texas since 1971 and currently works, in that capacity and as a responder to emergencies and chemical spills, for Union Pacific. Mr. Hagelthorn commented he had talked with Mr. Smith extensively and made a motion to accept Mr. Smith. Ms. Falkenberg seconded the motion. By vote of members and alternates present, the RAB approved Mr. Smith as a member. Mr. Smith was asked to step forward and join the other RAB members at the tables.

Ms. Lexia Ribeiro was not present.

C./D*. Review and Approval of Revised RAB Application/Charter (Discussed Together*)

- Discussion revolved around changing the application and the charter. Mr. Quintanilla took exception to wording that the RAB was not a decision-making body. Although the

September 1994 Guidance on the Formation of Restoration Advisory Boards so states, Mr. Quintanilla maintained that the law stated differently.

- Mr. Quintanilla took exception to the wording that members would not be financially compensated. It was agreed that this should be clarified to state that, while members would not be compensated (wages) for participation, the administrative needs of the RAB would be funded.
- The RAB voted to have a subcommittee to work with the Air Force to determine and make the appropriate changes for the above issues. Mr. Quintanilla volunteered to chair the subcommittee. Mr. Haglethorn volunteered to serve on the subcommittee. The issues of Application and Charter rewrite were then tabled pending review and report by the subcommittee.

III. Old Business

A. Public Hearing Update

- Mr. Richard Trevino presented status of scheduling Public hearings for zones 1, 2, and 3 (see slides at attachment 3). The public hearing dates are uncertain at this point until formal comments are received from the State of Texas. Draft comments have been received, but comments cannot be released in draft form. As soon as the state makes final comments, they will be made part of the administrative record and will also be made available to RAB members.

B. Public Affairs Update

- Prior to beginning his presentation of the Public Affairs Update, Mr. Mike Estrada introduced Councilman Juan Solis, who was in attendance.
- Slides of Mr. Estrada's update are attachment 4. The presentation covered:
 - Mailing lists
 - Identified news media Kelly usually works with
 - Changes in the information repository
 - Points of contact for various issues including claims
 - Upcoming activities
- There was considerable discussion about the points of contact. Mr. Estrada explained current policy that all environmental issues be referred to Public Affairs who then provide guidance to the concerned individual on how to proceed. Mr. Quintanilla stated that he wanted a specific contact number and name for claims.
- Mr. Estrada concluded by asking the RAB members if they would like to regularly receive the information packet that Public Affairs distributes to Kelly AFB senior staff. An example of this packet was distributed at the meeting. This information is gleaned from the Internet, and covers federal and state regulatory agencies. RAB members voted to receive this information as it becomes available.

C. RAB Newsletter

- Discussion revolved around the importance of more information being distributed. The RAB voted 8 to 6 in favor of a RAB newsletter. A subcommittee will be formed with

are two separate technical issues, soil will be addressed at a future time. Kelly make a record of all comments from the public and they will be addressed at a later date. A complete set of responses will be made available to the RAB as well as copies of the Feasibility studies for Groundwater Zones 1, 2, and 3. Revised plans on all 3 zones will also be made accessible.

B. Public Affairs Update

Mr. Dick Walters presented a Public Affairs update (Slides, attachment 4). After an overview of all the topics summarized on Mr. Walters' slides, attention returned to the issue of Technical Assistance Grants (Attachment 4, page 5). The board decided to hold a special session of the RAB, August 1995, to discuss this subject in greater depth.

C. RAB Newsletter Status

Mr. Sam Sanchez, chairman of the Newsletter sub-committee stated the committee had not met. The committee's plan is to review other RAB products from different bases. meet before the 10 July meeting and present a report at that time.

D. RAB Charter/Application Update

Mr. Armando Quintanilla presented the committee report. The third draft is complete. The Purpose & Function language has been updated. Other areas are being fine-tuned: a) conflicts of interest, b) appeals process, c) reporting of spills and significant environmental incidents. The final draft will be mailed to members late June for discussion at the next meeting. Under current charter, members can vote to accept the new charter at the September meeting.

E. Review of Kelly's Groundwater Modeling (Not on Agenda)

Mr. George Rice presented a report on his review of Kelly's groundwater modeling. He said he was about three-quarters finished with the review of the groundwater Zone 2 documents. Mr. Rice noted that his review seems to show that the contractor is doing a good job, with only a few problems noted. he discussed two concerns:

- 1) Documents do not address potential contamination of the Edwards Aquifer via abandoned wells.
- 2) The Air Force has not provided a copy of the computer modeling software used by the contractor.

IV. New Business

A. Quintana Road Culvert Update

This agenda item was initially passed over during the meeting and addressed later (after Item C) by Mr. Frank Vega representing the City of San Antonio Mr. Vega provided status of a City of San Antonio project to capture and treat contaminated groundwater from

Mr. Trevino then commented on Mr. Rice's findings and agreed that mistakes had been made in tabulation of data in the Remedial Investigation phase of the cleanup program, but that the data had been corrected in the Feasibility Study phase of the program. He reiterated that the information had been corrected before being used in the modeling for the groundwater FSs..

Mr. Quintanilla next made a motion to allow the Remedial Design work to continue, but agreed with Mr. Rice that an independent expert should be hired to review the modeling efforts. Mr. Sanchez seconded his motion. Discussion then occurred among RAB members and a vote was held. The motion to hire an independent expert failed 7 to 6.

Mr. Bailey assured Mr. Rice that as the Remedial Design work is completed that the modeling data is being reviewed by a different contractor to ensure the data is correct and the modeling accurate.

b. Technical Assistance Grants

Due to the absence of Mr. Ayala, this presentation will be at the next RAB meeting.

c. Newsletter

Mr. Sanchez presented a report stating the Newsletter committee met and decided the following:

- The RAB would edit the newsletter prior to mail out.
- Information would be solicited from the community.
- Richard Garcia, TNRCC Regional Director, would be asked to make occasional written contributions as would the Director of the San Antonio Metropolitan Health District.
- Kelly Air Force Base Public Affairs will be presenting a sample newsletter at the next RAB meeting.

Concerns discussed were frequency, distribution, and a name for the newsletter. No decisions were made on these concerns. Mr. Sanchez suggested comments be discussed at the next RAB meeting.

d. Charter revision

Mr. Quintanilla presented the Charter committee report (Attachment 3). Each section was presented with a vote to accept or decline the committees' recommendations. In addition, other changes proposed by Mr. Quintanilla are in Attachment 4.

Each amended change was accepted by majority vote with these exceptions:

- Section I.A.: The RAB accepted the committee's changes but declined Mr. Quintanilla's suggested changes.
- Section IV.A.: The sentence will read "Individual community Members must reside or work in Bexar County."
- Section IV.D.: In the first sentence after *writing* add "or by notifying" and delete "to".
- Section IV.I.b.: The last sentence will replace ... *and Community Co-Chair* with "designated representative speaking". In addition the sentence will be added "And if requested by either party, be allowed an audience with the installation Commander of SA/ALC."

Restoration Advisory Board Amended Charter

■ I. Name

- A.
- B.

■ II. Purpose and Function of the Restoration Advisory Board

- A. {Revised}
- B.

■ III. Basis and Authority for Charter

Restoration Advisory Board Amended Charter

■ IV. Membership

- A.
- B.
- C.
- D.
- E.
- F.
- G.
- H.

- I. » a.
- » b.
- » c.

Restoration Advisory Board Amended Charter

■ V. Restoration Advisory Board Structure

- A. {Revised}
- B.
- C.
- D. {Revised}
- E.
- F.
- G.
- H.
- I.
- J.
- K. {Revised}

Restoration Advisory Board Amended Charter

■ VI. Effective Date and Amendments

- A.
- B.

■ VII. Termination

■ VIII. Signatories to the Restoration Advisory Board Charter

**Correction to Draft RAB Meeting Minutes
Aug. 21, 1995**

4d. Charter Revision [*specific additions or changes are italicized*]

Mr. Quintanilla presented the Charter committee report (Attachment 3). Each section was presented with a vote to accept or decline the committee's recommendations. *Other changes were proposed by Mr. Quintanilla and are included at Attachment 4. The Board accepted the committee's report with the following changes:*

Redesignate section 2B to 2C, insert as the new 2B: *Kelly Air Force Base shall consult with and seek the advice of the Board Members on the following issues:*

- a. Identifying environmental restoration activities and projects at Kelly Air Force Base.*
- b. Monitoring progress on these activities and projects.*
- c. Collecting information regarding restoration priorities at Kelly Air Force Base.*
- d. Addressing land use, level of restoration, acceptable risk and waste management and technology development issues related to environmental restoration at Kelly Air Force Base.*
- e. Developing environmental restoration strategies for Kelly Air Force Base.*

Change section 4A to read: "Individual community members must reside *or work* in Bexar County or currently work or live on Kelly Air Force Base."

Change the first sentence of section 4D to read: Members unable to continue to fully participate shall submit their resignations in writing *or by orally notifying* either of the Restoration Advisory Board co-chairs.

Change the last sentence of section 4Ib to read: The Base Co-Chair and *a designated representative speaking on behalf of the Board members will each be offered the opportunity to provide a written summary of the rationale and their recommendations, and if requested by either party, be allowed an audience with the installation commander at the San Antonio Air Logistics Center.*

Change section 5D to read: The Restoration Advisory Board shall meet quarterly, *at formally advertised times and locations.* More frequent *formal* meetings may be held, if deemed necessary by the Restoration Advisory Board. *The minimum number of members required to be present before the Board can transact business is 50 percent of the membership.*

Change the second and third sentences of section 5H to read: Restoration Advisory Board members should submit *any written comments to either the Community Co-Chair or individually to the base community involvement coordinator* on the subject documents within the time frame specified (30-60 days). The Community Co-Chair will consolidate comments from the Members *who wish to have him submit them on their behalf.*

Change the fourth sentence of 5K and add an additional sentence to read: 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 Members at the Restoration Advisory Board meeting following the release or incident. *The Restoration Advisory Board will be notified of all reportable spills prior to a review of the meeting minutes.*

4. Subcommittee reports

Newsletter (vote on name)

In the absence of Mr. Sam Sanchez, Mr. Kirk Loftin presented a draft newsletter called RAB Voices with Dr. Guerra (director of Health) and Mr. Garcia (TNRCC Region 13 Manager) having submitted articles. Under the proposal, Mr. Bill Sain, Mr. Armando Quintanilla and Mr. Sanchez would act as editors of this publication. Kelly AFB Staff would prepare. This newsletter would be distributed 6 times a year (every other month). After discussion, this issue was tabled until the next RAB meeting.

Technical Assistance Grants

In the absence of Mr. Ayala, this topic was not discussed.

Groundwater

Mr. George Rice stated that two major problems may exist based on his review of groundwater feasibility studies. 1). Subjection of people to high risk of cancer and 2). The plan may be illegal. (see attachment 4)
He proposed meeting with Mr. Bailey and contractor(s) to resolve the issues.

Charter

Mr. Quintanilla submitted proposed changes to the charter (attachment 5). The Board approved a motion to accept the changes and vote on the complete charter at the next RAB meeting.

5. Discussion/vote concerning Agency for Toxic Substances and Disease Registry

Mr. Bailey stated that experts from Armstrong Labs (Brooks AFB) are looking at information from 1986 to present. He also stated that Kelly has acquired a physician that is researching data gaps and voids and researching important information. This professional is highly skilled in Toxicology and performing Public Health assessments.

The RAB voted and approved the writing of a letter to ATSDR. Mr. Quintanilla and Mr. Tom Moore, with the assistance of Mr. Mike Estrada (Kelly AFB/Public Affairs) will draft a letter to be signed by the RAB co-chairs by the end of next week. (October 6).

6. Briefing - Soil Proposed Plans & public comment period

Mr. Dan Medina (Geologist) presented a briefing (attachment 6)

1. Final Approval/Sign Revised Charter

- Mr. Bailey submitted the revised RAB charter for signature by the co-chairs. Ensuing discussion revealed lingering concern by several RAB members regarding provisions covering removal of members and conflicts of interest - despite the fact that the RAB at the previous meeting had approved the revised charter.
- After discussion, it was suggested that charter wording, concerning removal of members, be revised such that a majority vote of quorum of the RAB be required for removal. A motion, made and seconded, to this effect was carried by vote of the RAB.
- An edited version of the charter will be mailed to RAB members to allow review prior to the next RAB meeting.

2. Potential Conflict of Interest Disclosure (COI)

Ms. Williams, from the Kelly Staff Judge Advocate's office, provided a summary of the issue. Verbiage is needed in the charter to allow the board to deal with any COI issues that should arise, in accordance with law. The verbiage offered is structured to protect individual, due-process rights. In essence, members who stand to realize personal or financial gain from issues before the board would not be eligible to vote those issues. COI will be dealt with on a case-by-case basis. Examples of issues that might be a COI are: claims against the Air Force relating to environmental issues before the board or being an employee of, or working for, a firm providing consultant services to the Kelly Environmental Management Directorate.

- A motion to open consideration of charter issues in addition to member removal and COI, made and seconded, was defeated by vote of board members present, 3 for, 9 against.
- A motion to approve the charter as is, made and seconded, was defeated by vote of board members present, 4 for, 8 against.
- A motion to approve the charter except for the 2 sections at issue, and refer those sections back to the RAB charter subcommittee for rewrite, made and seconded was passed by vote of board members present, 9 for, 3 against.

3. Election of Community Co-chair

Three candidates were nominated. Allan Hagelthorn, Armando Quintanilla, and Juan Solis, Sr. Air Force personnel excused themselves from the nomination and voting portion of the meeting. It was suggested two votes would be taken. First vote between the 3 candidates and the second vote between the two candidates with the most votes, so that the candidate elected would be elected by the majority of the RAB. A motion to this effect, made and seconded, passed by unanimous vote of board members present.

- Initial vote resulted in a run-off between Mr. Quintanilla and Mr. Solis.

**Minutes of the 12th meeting of the
Kelly Air Force Base Restoration Advisory Board
11 December 1995
Price Elementary School**

Members and alternates present:

Mr. Larry Bailey, RAB Community Co-Chair
Mr. Gary Beyer
Mr. Tom Culbertson
Mr. Allan Hagelthorn
Dr. Gene Lene
Mr. B. Kirk Lofton, alternate for Sam Sanchez
Mr. Armando Quintanilla
Mr. George Rice
Ms. Deborah Robinson, alternate for Bill Sain
Mr. Desiderio D. Raygosa, alternate for Nick Rodriguez
Mr. Juan Solis, RAB Community Co-Chair
Mr. Edward Weinstein

Kelly Air Force Base Staff present:

Mr. Michael Estrada
Mr. Daniel Medina
Captain Ed von Dran
Mr. Dick Walters
Ms. Victoria Wark
Ms. Adrienne Williams

Members absent without alternates:

Mr. Charles Ayala
Mr. Roy Gill
Ms. Yolanda Johnson
Mr. Carl Mixon
Mr. Tom Moore
Mr. Sam Murrah
Ms. Kelly Thurlow

Mr. Juan Solis Sr., Community Co-Chair, called the meeting to order at 6:10 p.m. and announced that a quorum was present. No changes to the agenda were recommended. A copy of the agenda is included as Attachment 1.

Item I: Charter Revision

The Board approved a new charter to take effect at the next meeting. In accepting the new charter, the Board excluded sections G, H, and I, dealing with member conflict of interest (COI). These sections and the issue of COI will be placed on a future agenda.

In addition, the Board approved a motion waiving a provision in the original charter. That provision states that changes to the Charter must be read at one meeting and approved at the

Minutes of the 12th Meeting of the
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next. Adherence to this provision would have delayed the new charter's approval until the next meeting.

In discussing the COI provisions of the new charter, Mr. Armando Quintanilla informed the board that he had filed a claim against the Air Force centering on his property, 710 Price Avenue. He stated that he would exclude himself from any decisions or discussions concerning the property. Mr. Solis then asked the board whether any other members had a COI; none indicated that they had a conflict.

Item II: Approval of Meeting Minutes

The Board deferred approval of the minutes. Several Board members had not received the minutes in time to review them before the meeting.

Item III: Membership Actions

Mr. Larry Bailey reported that he and Mr. Solis had sent a letter to Paul Roberson of the Initial Base Adjustment Strategy Committee asking him to join the Restoration Advisory Board.

Mr. Bailey informed the board that Mr. Tom Smith had been advised of his removal from the Board for missing two consecutive meetings without an alternate and that Mr. Smith had indicated an interest in re-joining the Board. Mr. Bailey stated that Mr. Smith was informed that he would have to re-apply for membership and had been provided with the necessary application.

Mr. Bailey informed the board that Mr. Solis' alternate would be Mrs. Solis.

Additionally, Mr. Bailey reported that Ms. Kelly Thurlow had verbally requested termination of her membership. Ms. Thurlow will be officially notified of her removal.

Item IV - TNRCC Risk Reduction Rules - How Clean is Clean?

Mr. Gary Beyer, Board member representing the Texas Natural Resource Conservation Commission (TNRCC), made a presentation to the Board concerning TNRCC Risk Reduction Rules. Copies of his overhead transparencies are included as Attachment 2. *(To be provided)*

Mr. Beyer explained the three-level, risk based clean-up standards that the TNRCC enforces. These standards replaced the old standard of "clean to background levels".

In response to a question about which standard was most stringent, Mr. Beyer stated that standard 1 is the most stringent, but that it was not economically feasible to always clean up to that standard. Additionally, Mr. Beyer stated that TNRCC had evaluated the Kelly proposal and found it to be protective of the human health and the environment.

Mr. Beyer also discussed the US Environmental Protection Agency's role in the clean up of Kelly Air Force Base. The EPA has authorized TNRCC to evaluate Base clean up proposals

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Kelly Air Force Base Restoration Advisory Board
5 February 1996
Price Elementary School

South San Antonio's drainage problems, that it is part of a large program and attempts to fix the worst problems first within limited funding.

In response to concerns expressed about drainage and other problems in South San Antonio and the Quintana Road area, Mr. Vega and Mr. Don White explained that the city might have to identify a new project to re-address those issues.

Mr. Solis suggested that many of the concerns being aired should be taken to the appropriate councilperson. Mr. Vega reinforced this point by stating that if these issues are not taken up by the council, it won't get done.

Mr. Vega stated that this project would cost about \$7.8 million and that the Air Force was covering expenses over and above what it would have cost if the contamination from Kelly had not been encountered during initial construction.

In response to questions about construction inconvenience to the neighborhood, Mr. Vega acknowledged that the community would experience some inconvenience, but that access for emergency services, mail delivery, garbage pick up, etc. would be maintained.

Item VII - Subcommittees Reports.

- **Charter** Mr. Quintanilla submitted his resignation as chairman of the charter subcommittee. A motion to accept the resignation was made and seconded, and carried by show of hands. In response to a call for volunteers to fill the vacancy, Mr. Hagelthorn volunteered to chair the committee and Mr. Rice volunteered as alternate. A motion to approve the volunteers was made, seconded, and carried by show of hands.
- **Newsletter** Mr. Kirk Loften related status from Mr. Sanchez. He needs two committee members to work with him. Mr. Quintanilla volunteered to meet with Mr. Sanchez.
- **Technical** Mr. Rice informed the board that the technical subcommittee had not met since the last RAB meeting. He had three things he wanted to place before the board.

1. He did not hold a technical subcommittee meeting.
2. He sent a letter to General Childress (requesting a meeting) some 6 weeks ago and has not yet received a response. Mr. Estrada informed the board that the General's response had been earlier on Monday, 5 Feb. 96.

In response to a question, Mr. Estrada informed the board that the community would be invited to the meeting with General Childress.

3. Mr. Rice offered his alternative analysis of a cleanup option for the Quintana area which he says would shorten the cleanup to five or six years. The plan would use 26 pumping wells and 38 injection wells. Mr. Haglethorn and Ms Williams

Charter Subcommittee

Mr. Allan Hagelthorn asked for inputs on charter changes by July 25. He said there is new guidance on RABs that needs to be incorporated into the existing charter. Mr. Quintanilla asked for clarification on whether or not the RAB is a decision-making body. Mr. Hagelthorn said according to federal law, the RAB is not.

Mr. Quintanilla said the issue of conflict of interest needs to be addressed. He said since TNRCC is partially funded by the Air Force, they have a conflict of interest.

Item VII: New Business

A. Upcoming Documents

Mr. Bailey indicated two documents will be released soon—the Basewide Remedial Assessment and the Zone 5 Focused Feasibility Study for cleaning up groundwater in the off-base area.

No other new business was reported.

Item VIII: Summary and Closing

The next meeting date was set for August 26. Topics of discussion will be the Basewide Remedial Assessment and the Focused Feasibility Study for Zone 5. The RAB suggested the meeting be held in the same location.

Mr. Quintanilla asked that a copy of the letter sent by TNRCC to the County Judge regarding groundwater contamination be sent to all RAB members. Mr. J. Solis said it would be done.

Mr. Quintanilla suggested the Air Force/Community meeting be scheduled for the week of July 22.

Item IX: Community Concerns

Many members of the public in attendance expressed concerns to the RAB on the following topics:

Information: Some felt that not enough information was being provided, and that what information is provided is not given in a way people understand.

Health concerns: Several residents reported health problems in their families which they believed are related to the contamination and the fuel storage tanks. They asked for help in determining the source of the problems and in taking away what they believe is the cause.

Fuel Storage tanks: Several residents said they want the storage tanks to be removed. They complained of the odor and the potential health risk.

2. Quintana Road - old and new route designs are being reviewed. Additional soil tests are being done to enhance cleanup designs. Construction of temporary soil staging facility is scheduled for November. This facility is only for handling soils removed during the testing/construction. The city is reported to have scheduled construction in early 1997.

B. Questions and Comments

Mr. Armando Quintanilla asked if the Operation and Maintenance of the Zone 3 cleanup systems will be completed by 2001, as indicated on the timeline. He was told that would be determined at the five-year review, which would likely be in 2001. Mr. Quintanilla asked that Progress Reports published by the base include test results.

A short break was taken.

Item VI: Subcommittee Reports

A. Technical Subcommittee

Mr. George Rice reported that the Technical Subcommittee had met with the Air Force and its contractor to discuss cleanup ideas. They will meet after the next pump results are available.

B. Charter Subcommittee

Mr. Alan Hagelthorn announced a 16 September meeting of the Charter Subcommittee at 9 a.m. in conference room of building 306 on Kelly AFB. Membership renewals will be discussed at the meeting. All RAB members are invited to attend.

Item VII: New Business

A. Restoration Division Update (see attached slides)

Mr. Dennis Guadarrama, Restoration Division Chief, announced that RAB members and alternates are invited to attend a Risk Communication Course offered by Brooks AFB. The course will be sometime in October.

In addition, he announced that Southwest Research Institute will be involved as a third party in soil and air sampling to be done in North Kelly Gardens. The RAB and community are invited to observe the sampling. It will begin within about three weeks and will be announced in the media.

Mr. Rice asked if the community can be involved in developing the sampling plan. He was told they could.

- B. Mr. Quintanilla said the agenda items he requested for this meeting were ignored and that he would like to see them addressed at the next meeting. Mr. Solis and Mr. Edward Riojas, Air Force Co-chair, assured him they would be addressed.
- C. The minutes were approved without change.
- D. Mr. Dan Medina, Kelly AFB, gave a short presentation on the 7 November InfoFair, held at Kennedy High School. He said the InfoFair went very well and there was considerable interest in the topics among those who attended. In the future, he said, Kelly is planning to do several more InfoFairs to answer the questions and concerns expressed by attendees
- E. Questions and Comments

Mr. Quintanilla commented that the cleanup schedule posted for Zone 3 indicated specific dates for the design and construction of cleanup systems. He asked if those designs will be brought before the RAB. Mr. Medina said the design will be discussed in the RAB's Technical Subcommittee.

Mr. George Rice asked how the estimate of 16 years to cleanup Zone 3 was determined. Mr. Medina said it was an estimate based on current documentation; however, the actual cleanup time will probably be shorter.

Item III: Charter Subcommittee Reports

Mr. Alan Hagelthorn, Charter Subcommittee Chair, gave a report on the charter subcommittee's last meeting. He said the changes are being proposed to address changes to Department of Defense policy on RABs and to better define RAB membership. (A copy of the report is attached to the minutes.)

A. Membership - Discussion

- 1) Mr. Quintanilla expressed concern that the changes in the charter language would allow people outside the area to become RAB members. He said he was opposed to the changes. He asked for EPA's opinion on the language. Mr. Rick Ehrhart, EPA Representative, said he did not oppose the changes.
- 2) Mr. Paul Person, Union Pacific Railroad Representative, said this issue was discussed in detail at the subcommittee meeting, to which all RAB members were invited. He said the RAB must ratify any new members.
- 3) Vote: 9 in favor and 5 against. Motion passed.

B. RAB Member Terms of Service - Discussion

- 1) Mr. Quintanilla said the change in wording makes it so anyone can nominate themselves to be on the RAB. He again asked for EPA's opinion. EPA expressed no opposition to the proposed change.
- 2) Mr. Tom Culbertson said he did not think the community was represented on the board. He said the citizens need better representation and need to be heard.

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000ACQUISITION,
TECHNOLOGY
AND LOGISTICS

JAN 23 2004

Dear RAB or TRC Member:

The Department of Defense (DoD) understands that communication and cooperation with stakeholders is fundamental to the success of its Defense Environmental Restoration Program (DERP). As such, it is DoD's policy to involve communities in the environmental restoration process through Restoration Advisory Boards (RABs), Technical Review Committees (TRCs), and other public involvement opportunities. The partnerships developed through RABs and TRCs have expedited DoD's fulfillment of its environmental restoration requirements, installation by installation.

DoD has developed a draft proposed rule regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. DoD proposes this rule in response to 10 U.S.C. § 2705(d)(2)(A), which requires the Secretary of Defense to develop regulations regarding RABs. The proposed regulations are based on DoD's current policies for establishing and operating RABs, as well as DoD's experience working with RABs.

DoD is sending this draft proposed rule to the co-chairs of the 299 RABs and 29 other advisory committees it supports at active and closing installations and formerly used defense sites. As you are a RAB or TRC co-chair and an active participant in the DERP, we would like to extend to you and the other members of your RAB or TRC an opportunity to review this draft proposed rule prior to its publication for public comment in the *Federal Register*. If you or any other members of your RAB or TRC would like to comment on the rule, you may submit comments to us anytime from now until the end of the official 60-day public comment period, which will begin when the proposed rule is published in the *Federal Register*. We anticipate publishing the proposed rule in the next few months.

If you would like to submit comments, please submit them electronically through the Web at www.denix.osd.mil/rabrul or via electronic mail (e-mail) to Patricia.Ferrebee@osd.mil. Comments may also be mailed to Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Environmental Management), 3400 Defense Pentagon, Washington, DC 20301-3400. Questions may also be directed to Ms. Ferrebee by telephone at 703/695-6107.

Sincerely,

Mr. Patrick Meehan, Jr.
Director, Environmental Management

Enclosure: As Stated



DRAFT Revised
Proposed RAB Rule

January 2004

Department of Defense 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 purpose of a RAB is to facilitate public participation in DoD environmental restoration activities at active and closing DoD installations and formally used defense sites where local communities express interest in such activities. The proposed regulations are based on DoD's current policies for establishing and operating RABs, as well as DoD's experience over the past eight years in using RABs.

DATES: Comments on this proposed rule must be submitted on or before DATE TBD.

ADDRESSES: Comments on this proposal should be sent to the following address:

Office of the Assistant Deputy Under Secretary of Defense
(Installations and Environment)
3400 Defense Pentagon
Washington, DC 20301-3400

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: TBD.

FOR FURTHER INFORMATION CONTACT:

Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Installations and Environment), 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

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a. Purpose

b. Purpose and Scope of Responsibilities of RABs

c. Definitions

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- f. Guidance
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 - 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 (U.S.C.).

II. Background

The Defense Environmental Restoration Program (DERP) was established in 1986 to "carry out a program of environmental restoration at 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, 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. Although RABs provide advice and 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, 2002, DoD reported the existence of 299 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 environmental and resource 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 prescribed 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 eight 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 among DoD, regulatory agencies, 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 and give meaningful consideration 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 only issues associated with environmental restoration activities under the DERP at DoD installations. 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 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. 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 will prepare detailed 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 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.

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 fund is used to pay for RAB administrative expenses at FUDS. At BRAC installations, BRAC funds are 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 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 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 and give meaningful consideration to the recommendations provided by individual RAB members. Consensus is not a prerequisite for RAB member recommendations.

A RAB may address only issues associated with environmental restoration activities under the DERP at DoD installations. 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 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 meaningful 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).
- *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.
- *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 efficiently 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 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 Assistant 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 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 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. 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, 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.

Where RABs are not formed initially, installations should reassess community interest at least every 24 months. 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.

b. Responsibility for Forming and Operating a RAB. Once the installation determines that a RAB must 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 designate 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 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 meaningful 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 underrepresented, 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 should 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, members of the community, EPA, and state, tribal, or local government representatives, as appropriate.

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.

Many 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. DoD will not preclude RAB membership to individuals who are party to a lawsuit against the federal or state government concerning the installation or any of its activities if the individual identifies the fact that he or she is a party to such a lawsuit, agrees not to use any information obtained through their position on the RAB in the lawsuit, and certifies that he or she can fairly represent the interest of the community on whose behalf he or she was selected rather than their own interest in the lawsuit.

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 Members of the RAB. 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 outset, 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. 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.

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 areas that may be addressed in the operating procedures include:

- Clearly defined goals and objectives for the RAB. The DoD installation co-chair will determine the RAB goals and objectives. These should be discussed with the RAB, and the DoD installation co-chair will listen to and consider the RAB members' comments before finalizing the goals and objectives.
- Announcing meetings
- Attendance requirements of members at meetings
- Development and approval procedures for the minutes of RAB meetings
- Meeting frequency and location
- Rules of Order
- The frequency and procedures for conducting training
- Procedures for selecting or replacing the community co-chair and selecting, replacing, or adding community RAB members
- Specifics on the size of the RAB membership and the periods for membership and co-chair length of service
- Review and responses to public comments
- Participation of the public
- Keeping the public informed about proceedings of the RAB.

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.¹

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

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

conducting RAB meetings.² All RAB meetings, however, should 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 meaningful consideration to all advice provided by the individual RAB members. While voting or polling the members may facilitate RAB discussions, such votes should be advisory only and not binding on agency decision makers. Group consensus is not a prerequisite for RAB input; each member of the RAB should provide advice as an individual.

c. Meeting minutes. DoD proposes that the installation co-chair, in coordination with the community co-chair, will prepare detailed 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 approved 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.

Any of the following situations are an indication that it may be appropriate to adjourn the RAB:

- 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 cleanup 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.

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

- A RAB may become inactive or adjourn 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 will continue to monitor for any changes in community interest that could warrant reactivating or reestablishing the RAB.
- The installation has transferred some or all of its environmental restoration role and responsibility to other entities, such as in the case of privatization, guaranteed-fixed price contracts, and early transfer.

(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 dissolve 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 efficiently 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 adjourn 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 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. 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, 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 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 a decision is made to dissolve a RAB or reconstitute a dissolved RAB, the Installation Commander will notify the public of the proposal to dissolve or reconstitute 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 Information Repository. 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.

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.

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.

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 should 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 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 this rule) 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 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. 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, definitions, and applicability.

202.2 Criteria for establishment.

202.3 Notification of formation of a Restoration Advisory Board (RAB).

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.

206.8 Training RAB members.

206.9 Conducting RAB meetings.

206.10 RAB adjournment and dissolution.

206.11 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

Sec. 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 forum for the discussion and exchange of environmental restoration program information between DoD installations, regulatory agencies, and the community.

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

(c) Definitions. In this section:

(1) *Installation* shall include active and closing Department of Defense (DoD) installations and formerly used defense sites (FUDS). (2) *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.

(3) *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.

(4) *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.

(5) *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 efficiently 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 efficiently 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 Assistant 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.

Sec. 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 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.

Sec. 202.3 Notification of Formation of a Restoration Advisory Board (RAB).

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.

Sec. 202.4 Composition of a RAB.

(a) Membership. At a minimum, each RAB shall include representatives from DoD and the 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. RAB community members should live and/or work in the affected community or be affected by the installation's environmental restoration program.

(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 members serve voluntarily; therefore, DoD will not compensate them for their participation.

Subpart B—Operating Requirements**Sec. 202.5 Creating a mission statement.**

The DoD installation co-chair in conjunction with the RAB members shall determine the RAB mission statement.

Sec. 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 members of the RAB.

Sec. 202.7 Developing operating procedures.

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) Announcing meetings.

(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.

Sec. 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 Section 202.12 of this rule.

Sec. 202.9 Conducting RAB Meetings.

- (a) Public participation. RAB meetings shall 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.
 - (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 meaningful 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 detailed 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.

Sec. 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. Any of the following situations are an indication that it may be appropriate to adjourn the RAB:
 - (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 cleanup 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 transferred some or all of its environmental restoration role and responsibility to other entities.
 - (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 dissolve 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 Section 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. Where the reassessment finds sufficient and sustained community interest, 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.

(d) Public comment. If a decision is made to dissolve a RAB or reconstitute a dissolved RAB, the Installation Commander shall notify the public of the proposal to dissolve or reconstitute 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.

Sec. 202.11 Documenting RAB activities.

The installation shall document information on the activities of a RAB in the Information Repository. 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 the RAB.

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

mandate decides to

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.

Sec. 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.

Sec. 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: DATE TBD

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
(info to be updated)

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