

SUMMARY OF THE DEPARTMENT OF DEFENSE PROPOSED RANGE RULE

The Department of Defense (DoD) has developed a proposed Range Rule that identifies a process for initiating and conducting response actions on closed, transferred, and transferring military ranges. The regulation will address explosives safety, human health, and environmental concerns related to military munitions and other constituents on these ranges. DoD is promulgating this regulation pursuant to authorities set forth in the Defense Environmental Restoration Program (10 U.S.C. 2701-2707), Department of Defense Explosives Safety Board (10 U.S.C. 172), and the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675).

This rulemaking is also based, in part, on the Environmental Protection Agency's (EPA) proposed (60 Fed. Reg. 56468, Nov. 8, 1995) and final Military Munitions Rule (62 Fed. Reg. 6622, Feb. 12, 1997). In EPA's rulemaking, EPA recognized DoD's legal authority to establish regulations for military ranges, as well as DoD's unique expertise in addressing the explosives safety risks inherent in military munitions. EPA stated in its proposed rule that the DoD rule must fully protect human health and the environment, and provide for public and regulatory involvement throughout the process. DoD believes it has met this challenge in the proposed Range Rule (62 Fed. Reg. 50795, Sept. 26, 1997) and looks forward to promulgation of a final Range Rule in 1998.

DoD is promulgating this regulation in accordance with the Administrative Procedures Act. It has sought to facilitate discussions with the public, regulators, and other federal agencies by publication of pre-proposal drafts. DoD published the proposed rule in the Federal Register in September 1997, and it includes a formal 90-day public comment period.

The proposed Range Rule sets forth a comprehensive process for identifying, evaluating, and addressing military munitions and constituents on closed, transferred, and transferring ranges. That process ensures not only public safety, but also the safety of response personnel, while addressing human health and environmental concerns. Important provisions of the proposal are summarized in the following pages:

DOD RANGE RULE OVERVIEW

The process for addressing closed, transferred, and transferring military ranges has five basic phases: (1) Range Identification, (2) Range Assessment/Accelerated Response (3) Range Evaluation/Site-Specific Response, (4) Recurring Review, and (5) Range Close-out.

RANGE IDENTIFICATION:

Under the Range Rule, the Department of Defense would identify all land and water closed, transferred, and transferring ranges subject to the rule. As defined in the proposed rule, a military range is any designated land or water area used for training with military munitions, or any area used for munitions research, development, testing, or evaluation. The proposed Range Rule also defines the following categories of ranges:

Closed Range: A closed range is one that is taken out of service by the military and put to a new use that is not compatible with range activities. A range is considered closed, for example, when construction of buildings in that area have made it unsuitable for range use. Closed ranges are typically under the control of the military.

Transferred Range: A transferred range is one that has been released from military control. These areas are a subset of Formerly Used Defense Sites. Some of these ranges have been transferred to other federal agencies such as the Department of Interior or Department of Energy. Others have been transferred to state or local governments, or to private citizens.

Transferring Range: A transferring range is a military range, or portions of a military range, that is being considered for transfer outside of military control. These include ranges under the Department of Defense Base Realignment and Closure program, as well as other property transfer agreements. Transferring ranges remain under military control until they have been officially transferred to another party.

The proposed Range Rule does not address the management of military munitions or constituents on Active or Inactive Ranges. Active Ranges are those that are being used by the military for training, research, development, testing, and evaluation. An Inactive Range is one that is not currently being used, but is held in reserve by the Department of Defense in the event DoD has a change in mission that requires its use. The management of active and inactive ranges comes under existing Defense Department and Service regulations. The proper safety-based management guidelines for unexploded ordnance at active and inactive ranges will be addressed in a forthcoming policy to be issued by the Department of Defense Explosives Safety Board.

During the Range Identification phase, detailed information about the ranges would be recorded in a centralized range tracking system. DoD would use this range inventory to assist in prioritizing ranges for subsequent response. For example, Transferred Ranges (those already outside of DoD control and in non-DoD use) would be addressed before Transferring or Closed Ranges, which are still within DoD's control. DoD will seek to ensure that a notice of the land's prior use as a military range is contained in official land records.

The Range Identification phase would also include public and state involvement in identifying the location of closed, transferred, or transferring military ranges. After

verifying the accuracy of information received, DoD would enter the information into its central range tracking system. DoD also plans to provide information on the identified ranges to federal agencies that develop and distribute official maps and charts.

RANGE ASSESSMENT/ACCELERATED RESPONSES:

Range Assessment. Once a range has been identified, DoD would assess the explosives safety, human health, or environmental risks the range might pose. This assessment would include collection of existing information on such factors as soils and geology, terrain, vegetation, climate, current and predicted land use, and other data useful in assessing risk. The Range Assessment would allow response personnel to distinguish between ranges where risks can be readily managed and those that warrant more detailed study and analysis. The Range Assessment may require a visual inspection of the range or some sampling of environmental media.

Accelerated Response. An Accelerated Response is any readily available, proven method of addressing the immediate risks, particularly explosive risks, posed by military munitions or other constituents on military ranges. When range conditions warrant a response, DoD would implement a readily available, proven method of addressing the immediate risk.

Some examples of Accelerated Responses include:

1. Posting signs warning of danger associated with a range.
2. Erecting fences or taking other measures to control access.
3. Starting community education and awareness programs.
4. Installing monitoring wells to determine if substances are in the groundwater.
5. Conducting surface sweeps for unexploded rounds.

This is by no means a complete listing of the types of responses available to address the risks posed by ranges.

DoD would use information collected during the Range Assessment phase to determine which Accelerated Response measures are warranted. Additionally, information about the types of munitions used, reported incidents involving munitions, and information about the environmental setting of the range will also be helpful in assessing the risks and selecting an appropriate Accelerated Response. The primary difference between this type of response and a more complex, site-specific response is the scope of this evaluation. Consultation with federal and state agencies and the public, and public access to information, as well as a formal comment period,

would play an important part in selecting an Accelerated Response or determining that a more in-depth Range Evaluation must occur.

RANGE EVALUATION/SITE-SPECIFIC RESPONSE:

Range Evaluation. Range Evaluations are detailed investigations into the types of munitions used on the range, materials associated with these munitions, and the environmental setting. Information collected during this phase would be far more detailed than that collected during the Range Assessment. The primary purpose of the Range Evaluation phase is to assess the level of risk posed by the site and make an informed risk management decision. The Range Evaluation would be used to determine whether a Site-Specific Response is required and to provide an estimate of the overall risk posed by the range conditions.

Site-Specific Response. The Site-Specific Response evaluation examines various alternatives that address risks that have not been reduced or eliminated by responses taken earlier in this process. Each alternative would be examined in light of explosives safety requirements and nine criteria established by the National Contingency Plan. These criteria are as follows:

1. Overall protection of human health and the environment.
2. Compliance with applicable requirements of federal and state law.
3. Long-term effectiveness and permanence.
4. Reduction in explosives safety hazards, toxicity, mobility, quantity, or volume.
5. Short-term effectiveness.
6. Implementability (i.e., how feasible it is to implement the option).
7. Cost.
8. Acceptability to appropriate federal and state officials.
9. Community acceptance.

It is important to note that safety is the overriding concern. Before taking any action on a range, an Explosives Safety Plan must be submitted to the Department of Defense Explosives Safety Board for approval. Consultation with state agencies and public access to information, as well as a formal comment period, would play an important part in decision-making. Restoration Advisory Boards or similar forums would be involved in the process leading to specific range response actions. Because this phase would involve a complex study, it would generally be a long-term action.

RECURRING REVIEWS:

The purpose of Recurring Reviews is to ensure that range response actions continue to ensure explosives safety and protection of human health and the environment. The Review would

also determine if additional evaluation is required. The focus of the Review would depend upon the original purpose and nature of the response. DoD proposes that the initial Recurring Review of closed, transferred, and transferring ranges be conducted three years after an Accelerated Response or Site-Specific Response is taken, or as necessary to ensure that the response action is still effective. Subsequent Recurring Reviews would be conducted in the 7th year and at five-year intervals thereafter. There would be an immediate review if an emergency situation is identified. Likewise, regulatory agencies and the public may request further consideration of the effectiveness of the response action outside the Recurring Review schedule. Consultation with federal and state agencies and the public, public access to information, and a formal comment period, would play an important part in drafting the final report and decision document within this phase.

CLOSE-OUT:

Following review to ensure that the range is unlikely to pose further risk, or that the response objectives were achieved, DoD would end the response action. If at some future date a problem is discovered, however, DoD would address the problem as appropriate. Consultation with federal and state agencies and the public, public access to information, and a formal comment period, would play an important part in this phase.