

Dated: December 26, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 179

#### Development of a Munitions Response Site Prioritization Protocol

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

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** In response to Section 311 of the Fiscal Year 2002 National Defense Authorization Act, the Office of the Deputy Under Secretary of Defense (Installations & Environment), U.S. Department of Defense (DoD), announces its intention to develop a proposed site prioritization protocol for assigning to each defense site (hereinafter, munitions response site) a relative priority for response activities related to unexploded ordnance, discarded military munitions, and munitions constituents. Section 311 lists specific factors to be included in the protocol. DoD is requesting input from interested parties on: These factors; any additional factors to consider in developing a site prioritization protocol; how the proposed protocol should incorporate such factors as they relate to safety and environmental hazards; and recommendations on any existing prioritization methods, models, or tools that should be evaluated. DoD will also request comments on the proposed site prioritization protocol when it is available for review later this year.

**DATES:** Suggestions are requested through May 20, 2002.

**ADDRESSES:** Written suggestions on factors to consider in the development of the site prioritization protocol should be sent to: United States Department of Defense, Office of the Deputy Under Secretary of Defense (I&E)/CL, ATTN: Proposed Site Prioritization Protocol, 3400 Defense Pentagon, Room 3C765, Washington, DC 20301-3400.

This address must be used when submitting input by U.S. Postal Service Express Mail. Input will also be accepted via electronic e-mail at <https://www.denix.osd.mil/MMRP>.

**FOR FURTHER INFORMATION CONTACT:** Patricia Ferrebe, 703-695-6107.

Information regarding the schedule for developing the proposed site prioritization protocol, along with relevant background information, is available on the DENIX web site at <https://www.denix.osd.mil/MMRP>.

**SUPPLEMENTARY INFORMATION:** Section 311 of the Fiscal Year 2002 National Defense Authorization Act requires the DoD to develop, in consultation with representatives of the States and Indian Tribes, a proposed and final protocol for assigning to each defense site (munitions response site) a relative priority for response activities based on the overall conditions at each site. Section 311 provides for public notice and comment on the proposed protocol; requires that the proposed protocol be available for public comment on or before November 30, 2002; and directs DoD to issue a final protocol to be applied to defense sites listed in the Department's munitions response site inventory. As an initial step in developing the protocol, DoD seeks public input early in the development process prior to the public's opportunity to review and comment on the proposed protocol in November. DoD will also seek input from State, Tribal, EPA, and Federal Land Managers. DoD will consider this input during development of the proposed protocol.

Based on the requirements above, DoD intends to accomplish the following overall objectives with respect to development of a site prioritization protocol for munitions response sites:

- Prepare, in consultation with the States, and Indian Tribes, a proposed and final protocol per the requirements in Section 311 of the Fiscal Year 2002 National Defense Authorization Act.
- Publish the proposed protocol and provide a formal 60-day public comment period.
- Apply the final protocol to munitions response sites listed on its inventory.

Section 311 lists specific factors that may be considered when assigning a relative priority to munitions response sites. These factors may include:

- Whether there are known, versus suspected, unexploded ordnance, discarded military munitions, or munitions constituents on all or any portion of the defense site and the types of unexploded ordnance, discarded military munitions, or munitions constituents present or suspected to be present.
- Whether public access to the defense site is controlled, and the effectiveness of these controls.
- The potential for direct human contact with exploded ordnance,

discarded military munitions, or munitions constituents at the defense site and evidence of people entering the site.

- Whether a response action has been or is being undertaken at the defense site under the Formerly Used Defense Sites program or other program.

- The planned or mandated dates for transfer of the defense site from military control.

- The extent of any documented incidents involving unexploded ordnance, discarded military munitions, or munitions constituents at or from the defense site, including incidents involving explosions, discoveries, injuries, reports, and investigations.

- The potential for drinking water contamination or the release for munitions constituents into the air.

- The potential for destruction of sensitive echo systems and damage to natural resources. To better understand public concerns with regard to munitions response sites, DoD is soliciting early public input on:

- Additional factors to be considered.
- Existing prioritization methods.
- Other comments for developing the prioritization protocol.

#### Background

To ensure their readiness to protect and defend our nation, our Military forces conduct live-fire training and testing with weapon systems at ranges throughout the United States. As a result, some properties that DoD has historically used to meet its live-fire training and testing requirements have been found or are suspected to contain unexploded ordnance, discarded military munitions, or munitions constituents. This is the situation on many properties where DoD no longer plans to use military munitions.

DoD's challenge on these munitions response sites is to: (1) Protect human health and the environment; (2) identify where and how much of this material is present at munitions response sites; (3) set priorities for conducting response actions at these sites; and (4) conduct necessary response actions for these sites. To address these and other challenges, DoD is developing a comprehensive program to address munitions—response sites.

#### Relevant Definitions

Section 311 defines key term that delineate DoD's program to address munitions response sites. These terms are:

“Defense site” applies to locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does

not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions.

“Discarded military munitions” includes military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations.

“Military munitions” consists of all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosive and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed.

“Munitions constituents” means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions.

“Munitions response sites” means defense sites that contain unexploded ordnance, discarded military munitions, and munitions constituents.

“Unexploded ordnance” includes military munitions that—

- Have been primed, fused, armed, or otherwise prepared for action;

- Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and
- Remain unexploded either by malfunction, design, or any other cause.

Dated: March 12, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Parts 110 and 165

[COTP Honolulu 02-001]

RIN 2115-AA97, 2115-AA98

#### **Anchorage and Security Zones; Oahu, Maui, Hawaii, and Kauai, HI**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of six months. These security zones and a related amendment to regulations for anchorage grounds in Mamala Bay are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature and will extend from the surface of the water to the ocean floor. This proposed rule is similar to a previous rule published January 31, 2002, creating security zones in these areas until April 19, 2002. Entry into the proposed zones would be prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI.

**DATES:** Comments and related material must reach the Coast Guard on or before April 15, 2002.

**ADDRESSES:** You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813. Marine Safety Office Honolulu maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Honolulu between 7 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG E. G. Cantwell, U. S. Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522-8260.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Honolulu 02-001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

The deadline to submit comments is less than sixty days from the publication of the notice of proposed rules (NPRM) in the **Federal Register**. This short comment period will permit the Coast Guard to publish a temporary final rule before the expiration of the existing temporary security zone, and thus help ensure public safety and security. To provide additional notice, we will place a notice of our proposed rule in the local notice to mariners. You may request a copy of this notice via facsimile by calling (808) 522-8260.

In our final rule, we will include a concise general statement of comments received and identify any changes from the proposed rule based on the comments. If, as we expect, we will make the final rule effective in less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

##### **Background and Purpose**

Recent terrorist incidents in New York and Washington, D.C. have called for the implementation of additional measures to protect national security.