



DEPARTMENT OF THE NAVY  
NAVAL AMPHIBIOUS BASE LITTLE CREEK  
2600 TARAWA COURT SUITE 100  
NORFOLK, VIRGINIA 23521-3229

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To Restoration Advisory Board Members:

The Naval Amphibious Base (NAB) Little Creek is pleased to announce the "No Further Response Action Planned" (NFRAP) status of Installation Restoration (IR) Site 16 (the PCB Capacitor Spill Site). This follows the implementation of all appropriate and required response actions through successful completion of the PCB Soil Removal Action completed July 1995. This action has been documented in the Final Closeout Report for the PCB Soil Removal, Site 16 dated September 1996, which was finalized from the June 1996 Draft Final document with no comments or changes. No further response or action is required. Copies of the Final document and other important documents leading to this action are contained in the four Information Repositories and the Administrative Record. Furthermore, a notice in the Virginian Pilot will announce to the general public the NFRAP status of Site 16 and the availability of these documents.

NAB is also pleased to announce the availability of the Final Proposed Remedial Action Plan (PRAP) for Sites 9 and 10, the Driving Range Landfill and the Sewage Treatment Plant Landfill. Comments were received on the May 1996 Draft Final document. Those comments and response to comments are contained as an attachment in the Final document, and the document has been revised as required. The Final PRAP is also available in the Information Repositories and the Administrative Record. Copies can also be viewed at NAB Little Creek by contacting Kelly Greaser at 363-4571.

The Draft Final Feasibility Study for Site 7, the Amphibious Base Landfill and the Draft Final Supplemental Remedial Investigation for Sites 12 and 13, the Laundry Disposal Area and the PCP Dip Tank, will be completed soon. Please contact Kelly Greaser by February 14, 1997 if you would like a personal copy of either document to review.

On December 27, 1996, through cooperation of the Department of Defense (DOD) and the Environmental Protection Agency (EPA), a proposed rule for the Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities (DERA) was published in the Federal Register. A copy of the citation is included for your review.

The National Defense Authorization Act for Fiscal Year 1996 allowed DOD to develop a program to facilitate public participation in its environmental restoration activities. This program will help community members of the RAB to better understand the scientific and engineering issues underlying an

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N464  
27 JAN 97

installation's environmental restoration activities by providing independent technical assistance. This proposed rule was developed by a working group comprised of representatives of the military departments and the EPA and is based on input received in response to a Notice of Request for Comments in the Federal Register on May 24, 1995 (60 FR 27460-27463) and publication of the Proposed Rule for RABs in the Federal Register on August 6, 1996 (61 FR 40764-40772). A copy of the Notice was sent to RAB members in a letter from NAB dated June 12, 1995, and a copy of the Proposed Rule in a letter from NAB dated August 29, 1996.

The attached Federal Register notice contains the proposed rule and solicits comments from interested parties. It describes how community members of RABs can request technical assistance. The majority of respondents from the Notice of Request for Comments indicated their preference for Option C, the issuance of purchase orders to technical and public assistance providers. Their preference was based on the fact that this option has increased flexibility and responsiveness to community needs and has increased the ability of the RABs to contribute to the selection of the technical assistance provider. Furthermore, the RABs will have the ability to define the TAPP project, specify assistance provider qualifications and criteria for consideration by DOD, and provide consultation to DOD in the selection process. Because DOD must carefully balance available funds with the needs of RABs to procure technical assistance, DOD has determined that total technical assistance funding will be limited to \$100,000 per RAB, with no more than the lesser of 1 percent of the installation's projected restoration cost-to-complete or \$25,000 available during any fiscal year. Specifically, the funds can be used for technical support including short-term training, attendance at workshops, and procurement of technical consultants.

Comments are due by February 25, 1997. The final rule for TAPP will be published in the Federal Register after comments have been addressed.

It is DOD's intent to distribute this proposed rule as broadly as possible and seek comments from the public. As a RAB member, we felt you should have a copy for information and be provided an opportunity to comment should you choose to do so. Please share this notice with others who you believe may be interested in commenting on the proposed rule. Any questions or comments on the rule should be directed to Ms. Patricia Ferrebee at 703-697-5372, by fax at 703-697-7413, by e-mail at ferrebpl@acq.osd.mil, or by mail at Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup), 3400 Defense Pentagon, Washington, D.C. 20301-3400.

5090  
N464  
27 JAN 97

If requested, additional copies of 60 FR 27460-27463 and 61 FR 40764-40772 can be obtained by contacting Kelly Greaser. Any questions or comments on these matters can be directed to Kelly Greaser, IR Program Manager at NAB at 363-4571, or Scott Park, Remedial Program Manager at the Naval Facilities Engineering Command, Atlantic Division at 322-4788.

Sincerely,

  
LEROY A. BROWN  
Captain, U.S. Navy  
Commanding Officer

Encl:  
(1) Citation

Copy to:  
Commander Atlantic Division  
Naval Facilities Engineering  
Command Code 18223  
1510 Gilbert St.  
Norfolk, VA 23511-2660

section 351. C and D are members of the same consolidated group as described in § 1.1502-1(h). Assume that A, C, and D did not enter into the transaction with a principal purpose of substantially reducing the present value of their aggregate tax liabilities. One hundred ten percent of the applicable Federal rate based on annual compounding is 7 percent.

(ii) *Obligation-shifting transaction.* A is a property provider because it is obligated to make property available to B on account of a lease or similar agreement. B is a property user because it has the right to use property under its lease with A. D is an assuming party because, in the January 1, 2002, transaction, it acquires the property subject to A's obligation to make the property available to B for the remaining term of the lease. The transaction between A and D is an obligation-shifting transaction because D is an assuming party and A retains the right to receive amounts from B allocable to periods after the transaction.

(iii) *Availability of exception.* Even though the transaction between A and D is an obligation-shifting transaction, it is not recharacterized under this section. As of the date of the transaction, A has already received \$1,000,000. Under the constant rental accrual method described in § 1.467-3(d), the constant rental amount accruing for each calendar year during the lease is \$903,491.90. The aggregate amount that has already been received by A but that is allocable to periods after the obligation-shifting transaction is \$1,000,000 minus \$903,491.90, or \$96,508.10. Because this amount is less than \$100,000, the transaction is accepted from recharacterization under paragraph (c)(1)(i) of this section.

**Example 5. Exception where fair market value of leased property is less than 10 percent of value of all property transferred; incorporation of existing business—(i) Facts.** (A) On January 1, 2001, A leases property to B for a five-year period. The lease provides for rent of \$1,000,000 per year, payable annually on December 31.

(B) On January 1, 2003, the fair market value of the leased property is \$4,000,000. On that date, A transfers the property, together with \$3,000,000 of Class I and Class II assets and other property with a fair market value of \$39,000,000, in exchange for all of the common stock of C. A retains the right to receive the remaining three rent payments from B. The fair market value of the rent payments retained by A is \$2,486,851.99 (based on a discount rate of 10 percent). The fair market value of the property subject to the lease and transferred to B, reflecting A's retention of the right to the remaining three rent payments, is \$1,513,148.01. Assume that the transaction meets all of the requirements of section 351. Assume that A and C did not enter into the transaction with a principal purpose of substantially reducing the present value of their aggregate tax liabilities.

(ii) *Obligation-shifting transaction.* A is a property provider because it is obligated to make property available to B on account of a lease or similar agreement. B is a property user because it has the right to use property under its lease with A. C is an assuming party because, in the January 1, 2003,

transaction, it acquires the property subject to A's obligation to make the property available to B for the remaining three years of the lease. The transaction between A and C is an obligation-shifting transaction because C is an assuming party and A retains the right to receive amounts from B allocable to periods after the transaction.

(iii) *Availability of exception.* Even though the transaction between A and C is an obligation-shifting transaction, it is not recharacterized under this section. The fair market value of the leased property equals \$4,000,000. The fair market value of the property subject to the lease and transferred to B is \$1,513,148.01, and the fair market value of the rents retained is \$2,486,851.99. The aggregate fair market value of all of the property transferred, excluding Class I assets, Class II assets, and debt issued by the property provider, as part of the same transaction is \$43,000,000 (\$4,000,000 leased property plus \$39,000,000 other property, excluding Class I assets, Class II assets, and debt issued by the property provider). Because the value of the leased property, \$4,000,000, is less than 10 percent of \$43,000,000, the transaction is excepted from recharacterization under paragraph (c)(1)(iii) of this section.

(n) *Effective date.* This section applies to obligation-shifting transactions any significant element of which was entered into or undertaken on or after October 13, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96-32670 Filed 12-26-96; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 203

RIN 0790-AG14

### Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities

**AGENCY:** Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), DOD.

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the National Defense Authorization Act of 1996, the Department of Defense proposes these regulations on providing technical assistance to local community members of Restoration Advisory Boards (RABs) and Technical Review Committee (TRCs). RABs and TRCs are established to review and comment on Department of Defense actions at military installations undertaking environmental restoration's activities.

**DATES:** Written comments must be received on or before February 25, 1997.

**ADDRESSES:** Send written comments and requests for documents to the Office of the Deputy Under Secretary for Environmental Security/Cleanup, 3400 Defense Pentagon, Washington, DC 20301-3400. Comments may also be submitted electronically by sending electronic mail (e-mail) to: ferrebpl@acq.osd.mil.

**FOR FURTHER INFORMATION CONTACT:** Patricia Ferree or Marcia Read, telephone (703) 697-5372 or (703) 697-7475.

#### SUPPLEMENTARY INFORMATION:

##### Preamble Outline

- I. Introduction
  - A. Authority
  - B. Background of Rulemaking
- II. Summary of RAB Regulation
- III. Responses to Major Public Comments on RAB Funding Options Raised in the Notice of Request for Comments
  - A. Summary of Options
  - B. Comments in Support of Option C— Issue Purchase Orders to Assistance Providers
  - C. Comments in Support of Option A— Using the Environmental Protection Agency's (EPA's) Technical Assistance Grant (TAG) and Technical Outreach Services to Communities (TOSC) Programs
  - D. Comments in Support of Option B— Procurement of Independent Provider
  - E. Comments in Support of Option A Combined with Option C
  - F. Qualifications for Independent Technical Assistance Providers
  - G. Methods and Criteria for Allotment
  - H. Additional Services to be Provided Under Option C
  - I. Other Comments and Suggestions
- IV. Regulatory Analysis
  - A. Regulatory Impact Analysis
  - B. Regulatory Flexibility Analysis
  - C. Paperwork Reduction Act

##### I. Introduction

###### A. Authority

This proposed rule is issued under the authority of § 2705 of Title 10, United States Code. Subsections (c) and (d) of Section 2705 encourage the Department of Defense to establish either a Technical Review Committee (TRC) or Restoration Advisory Board (RAB) to review and comment on DoD actions at military installations undertaking environmental restoration activities. In 1994, Congress authorized the Department of Defense to develop a program to facilitate public participation by providing technical assistance to local community members of TRCs and RABs (section 326 of the National Defense Authorization Act for Fiscal Year 1995, P.L. 103-337). In 1996, Congress revised this authority (section 324 of the National Defense authorization Act for Fiscal Year 1996,

P.L. 104-112). It is pursuant to this revised authority, which is codified as new subsection (e) of § 2705, that the Department of Defense issues this proposed rule.

In general, § 2705(e) permits the Department of Defense to obtain, from private sector sources, technical assistance to help TRCs and RABs better understand the scientific and engineering issues underlying an installation's environmental restoration activities. TRCs and RABs may request this assistance only if:

(1) The TRC or RAB demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(2) The technical assistance—

(a) Is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(b) Is likely to contribute to community acceptance of environmental restoration activities at the installation.

Funding for this technical assistance program will come from the Defense Environmental Restoration Account for operating installations and formerly used defense sites, and from the Defense Base Closure Account for installations approved for closure.

#### B. Background of the Rulemaking

Over the past several years, the Department of Defense has participated as a member of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). This committee, comprised of a wide range of stakeholders, was chartered to develop consensus policy recommendations for improving environmental restoration at Federal facilities. In February 1993, the FFERDC issued the "Interim Report of the FFERDC: Recommendations for Improving the Federal Facilities Environmental Restoration Decision-Making and Priority-Setting Processes." This report recommended that Federal agencies become more proactive in providing information about restoration activities to stakeholders and that citizen advisory boards be established to provide advice to government agencies that conduct restoration at Federal facilities. This report also suggested the initiation of administrative and technical assistance funding.

The Department of Defense has issued policy for establishing RABs at all installations. On September 9, 1993, the Department of Defense issued policy for

establishing RABs at installations designated for closure or realignment under the BRAC Acts of 1988 and 1990 where property will be available for transfer to the community. On April 14, 1994, the Department of Defense issued RAB policy for non-closing installations as part of Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program. The policy called for the establishment of RABs at DoD installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are: (1) A government request that a RAB be formed; (2) fifty local residents sign a petition requesting that a RAB be formed; (3) an installation determines that a RAB is needed; or (4) the closure of an installation involves the transfer of property to the community. On September 27, 1994, the Department of Defense and the Environmental Protection Agency (EPA) issued joint RAB guidelines on how to develop and implement a RAB. Finally, on August 6, 1996, the Department of Defense proposed regulations governing the characteristics, composition, and establishment of RABs pursuant to NDAA-95 (61 FR 40764-40772). These regulations propose the policy for creation and implementation of RABs at defense installations.

The purpose of a RAB is to bring together people who reflect the diverse interests within the local community, enabling an early and continual flow of information between the affected community, the Department of Defense, and environmental oversight agencies. Recognizing the importance of citizen participation in the environmental restoration process, Congress authorized the provision of technical assistance and assistance to aid public participation in § 326 of NDAA-95. In response to this authority, the Department of Defense published a Notice of Request for Comments (May 24, 1995, 60 FR 27460-27463) on alternative methods for funding technical assistance. In 1996, Congress revised this authority in § 324 of NDAA-96. This proposed rule proposes regulations for providing technical assistance to RABs and Technical Review Committees (TRCs), and details the specific requirements for obtaining this assistance consistent with this new authority. Regulations regarding the characteristics, composition, and establishment of RABs were previously announced on August 6, 1996 (61 FR 40764-40772).

Because this rule relates to public grants, benefits, or contracts, it is exempt from the requirements of § 553 of the Administrative Procedure Act (5

U.S.C. 553), including notice and opportunity for comment. Nonetheless, the Department of Defense is interested in receiving public comments. The Department of Defense previously sought public comment on the issues addressed in this proposed rule in its May 1995 Notice of Request for Comments, and is seeking comments on this proposed rule as well in order to develop the final rule.

#### II. Summary of RAB Regulation

RAB policy is contained in the April 14, 1994, Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program and the September 9, 1993, memorandum on Fast Track Cleanup at Closing Installations. Joint Department of Defense and EPA RAB Implementation Guidelines were published in September 1994. Proposed regulations on RAB development and procedures were published on August 6, 1996, (61 FR 40764-40772).

A RAB will be established at installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are:

(1) A local government requests that a RAB be formed; or

(2) Fifty local residents sign a petition requesting that a RAB be formed; or

(3) An installation determines that a RAB is needed; or

(4) The closure of an installation involves the transfer of property to the community.

The purpose of a RAB is to act as a forum for discussion and exchange of information between agencies and the community and to provide an opportunity for stakeholders to review progress and participate in a dialogue with the decisionmakers.

The RAB will be comprised of representatives from the Department of Defense Components, the EPA and/or States, and members of the local community. The Department of Defense will ensure that the membership reflects the diverse interests within the community.

Statutory language defining the duties of the Secretary of Defense regarding consultations with RABs or TRCs can be found at 10 U.S.C. § 2705(f). Details regarding the establishment, operation, funding, and reporting requirements for RABs are contained in the proposed rule published in the Federal Register on August 6, 1996, (61 FR 40764-40772).

### III. Responses to Major Public Comments on RAB Funding Options raised in the Notice of Request for Comments

#### A. Summary of Options

Consistent with § 326 of the National Defense Authorization Act for Fiscal Year 1995 (NDAA-95), the Department of Defense considered three options for technical assistance funding to citizens affected by the environmental restoration of DoD facilities. These options were published by the Department of Defense on May 24, 1995, (60 FR 27460-27463) in a Notice of Request for Comments. The three options under consideration are described briefly as follows:

Option A proposes using the existing EPA Technical Assistance Grant (TAG) and Technical Outreach Services to Communities (TOSC) programs as vehicles to provide technical assistance to community members of TRCs and RABs. Under this option, the Department of Defense would sign a Memorandum of Understanding (MOU) authorizing the EPA to provide assistance to community members of TRCs and RABs using EPA's existing regulations. The TAG process provides funding directly to community members at National Priority List (NPL)

installations. The TOSC program would provide technical advisors and related services from designated Hazardous Substance Research Centers to community members at non-NPL installations.

Option B would involve the competitive procurement of one or more independent technical assistance providers to provide technical and public participation assistance to community members of TRCs and RABs at DoD installations.

Option C proposes the issuance of purchase orders to technical and public participation assistance providers up to the allowable limit per purchase order. Under this option, community members of the TRC or RAB would provide a description of the service they are requesting and the names of one or more proposed technical assistance providers to a DoD contracting office. A minimum set of organizational qualifications for receiving assistance would be specified by the Department of Defense under this option.

In the National Defense Authorization Act for Fiscal Year 1996 (NDAA-96), Congress established a limit on the total amount of DERA and BRAC funds that could be made available for use as support to RABs. These funding sources also fund technical assistance for public participation. Under all of the technical

assistance options examined today, the local installations will continue to be responsible for providing that portion of the available funds required for administrative support. Furthermore, under all options assistance would be limited to community members of TRCs or RABs at DoD installations. This has the added benefit of providing a return to the government in the form of enhanced public participation in the restoration process. Furthermore, NDAA-96 directed the Department of Defense to consider funding for technical assistance only under the following specified conditions:

(1) The Technical Review Committee or Restoration Advisory Board must demonstrate that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation, and available DoD personnel, do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(2) The technical assistance—  
(a) Is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(b) Is likely to contribute to community acceptance of environmental restoration activities at the installation.

This proposed rule responds to the public's comments on the options published in the request for comments and the requirements of § 2705 of Title 10 of the U.S. Code, as amended.

A total of 43 written comments were received in response to the request for comment. Approximately two-thirds of the comments received were from members of RABs, the groups most directly affected by the proposed rules, although a number of comments were also received from various government sources and potential providers of the services described in the notice. The written comments are available to the public in the docket for the notice. The major issues addressed by the comments and the Department of Defense responses to them are provided in this preamble.

#### B. Comments in Support of Option C—Issue Purchase Orders to Assistance Providers

A clear majority of the commenters expressed a preference for Option C, citing the increased flexibility and responsiveness to community needs provided by this option and the increased ability of the RABs and TRCs to contribute to the selection of the technical assistance provider. Several commenters noted the importance of

this latter provision in Option C, with some going on to state that the separation of the Department of Defense from the selection process was important in eliminating potential conflicts of interest and fostering increased trust in the contributions of the technical assistance providers. Furthermore, this option was viewed as an efficient use of funds, as unnecessary layers of management were eliminated.

In response to the clear support of commenters for Option C, the Department of Defense is today publishing the proposed rule describing the procedures for implementing this option for funding technical support for public participation. This option also provides benefits to the government, primarily in providing a direct return to the restoration process in the form of informed and involved public participation. The RABs and TRCs are in the best position to determine their particular requirements for assistance. Their description of the services required and the criteria for selecting a provider will allow the Department of Defense to obtain the necessary resources to enhance their participation. Option C, as proposed today, provides the most direct means for meeting those needs and for meeting the requirements of the Federal Acquisition Regulations. Furthermore, by means of the eligibility requirements outlined in § 203.11 and § 203.12 of this proposed rule, the Department of Defense has more assurance that its limited will be used to provide technical support to the RABs or TRCs.

The Department of Defense supports the legislative initiative to enhance public participation at DoD environmental restoration sites. Based upon the comments received, the Department of Defense believes that Option C will provide the greatest opportunity to provide TRCs and RABs with technical assistance in a manner that will promote the highest level of confidence among public participants in that assistance.

Ten commenters remarked on the increased workload the RABs might incur from the implementation of Option C, since this option would involve an application for assistance, a process with which the RABs might not be familiar. However, many felt the administrative burden under this option was significantly less than that entailed by Option A.

The Department of Defense is aware of the administrative burdens that might fall to RABs or TRCs and for this reason has sought to minimize them with the publication of this rule. Each option proposed would impose some

responsibility for administration and accounting. This proposed rule, however, seeks to limit the burden on RABs and TRCs by using the Department of Defense as the contracting office to administer funds to providers selected on the basis of specifications provided by RABs and TRCs, subject to the limitations of the Federal Acquisition Regulations as noted in the proposed rule. This process is expected to minimize administrative impacts on RABs and TRCs while still providing sufficient reporting and management requirements to effectively run the program.

Although Option C was favored by most respondents, some commenters preferred either Option A or Option B or some combination of options which included A or B. The Department of Defense carefully considered these options, but ultimately rejected them in favor of Option C for many of the same reasons as were provided by commenters.

#### C. Comments in Support of Option A—Using EPA's TAG and TOSC Program

Option A was favored by six commenters, who cited its status as an ongoing and functioning program that has already provided technical assistance to a number of groups at Federal facilities. Two of these commenters represented TOSC providers, or individual Hazardous Substance Research Centers; two others had positive experiences with this process at their installations. There were, however, other commenters who argued against the selection of this option. Principal among the reasons provided by these commenters was the lack of local control over the selection of a provider. Several commenters also noted the "cumbersome and time-consuming" administrative requirements associated with the application and reporting requirements of TAG grants and TOSC support. These were felt to be beyond the scope of administrative resources available to most typical RABs or TRCs. One commenter questioned whether the selection process used by TOSC providers would adequately serve the needs of RABs or TRCs, citing their experience with a potential TOSC provider. Other limitations noted were the unequal treatment afforded NPL sites versus non-NPL sites, the normal limitation of one TAG grant per site, which might lead to competition between RABs or TRCs and other community groups, and the uncertain ability of the EPA to provide sufficient resources to manage the additional grants for DoD facilities. Indeed, Region

IX EPA opposes the use of Option A because of the significant increase in workload it will generate for EPA staff. This commenter also believes that RABs and TRCs may be ineligible for TAG grants, which are intended for non-profit community groups, and is concerned that DoD's definition of technical assistance is broader than that used by the EPA and may lead to ineligible charges or inadequate support for RABs and TRCs.

In selecting Option C instead of Option A as a means for providing assistance to RABs and TRCs, the Department of Defense has balanced the expressed desires of those bodies to identify proposed technical assistance providers and the Department of Defense's own financial management responsibilities. Furthermore, the option of using TAG grants or TOSC support will continue to be available to communities surrounding DoD installations, although the prior existence of TAG or TOSC support at an installation may affect DoD funding priorities. Those arguments supplied by commenters in favor of Option A, because of its ready adaptation to Department of Defense use, are met by this proposed rule by implementing a process that will be immediately available to RABs and TRCs to obtain technical support. The Department of Defense also maintains that many of the comments opposing the selection of Option A have merit, and concurs that the administrative burden on RABs or TRCs associated with the procurement of a TAG grant or TOSC support could be an impediment to obtaining meaningful assistance.

#### D. Comments in Support of Option B—Procurement of Independent Provider

Only one commenter expressed interest solely in the selection of Option B, noting the neutral and credible assistance such a provider could supply. This commenter also expressed interest in providing the services outlined under this option. The Department of Defense's rejection of this option was again primarily based upon the majority of the commenters' wishes to maintain control of the assistance provider at the local level. Other comments that the Department of Defense believes have merit include the comment that the use of regional or national providers may exclude from participation firms providing localized or specialized expertise, and the fact that the procurement of regional or national providers under this option would take considerable time to implement.

#### E. Comments in Support of Option C Combined with Option A or B

Ten commenters favored the selection of Option C in conjunction with either Option A or Option B. The principal reason cited for this preference was the possibility of deflecting administrative burdens from the RABs and TRCs onto other entities. The Department of Defense believes it has met this objective by the use of DoD contracting offices in the issuance and administration of purchase orders, as detailed in this rule. The RABs and TRCs will have the ability to define the TAPP project, specify assistance provider qualifications and criteria for consideration by the Department of Defense, and provide consultation to the Department of Defense in the selection process.

#### F. Qualifications for Independent Technical Assistance Providers

The Department of Defense also solicited comments on the qualifications necessary for the independent technical assistance providers described in Option B, and the desirability of regional versus national assistance providers. However, because the Department of Defense supports Option C, these issues are no longer pertinent to this proposed rule.

#### G. Methods and Criteria for Allotment

Regardless of the option chosen, funding must, out of necessity, be subject to an annual limit per RAB or TRC. The Department of Defense solicited comments and suggestions as to the size of such a cap or the criteria that should be used to establish a cap.

Eleven commenters suggested options for allocating the limited resources available for technical assistance. Proposed amounts ranged from \$25,000 to \$325,000, with one commenter noting that the larger number is still less than that incurred by lawsuits brought by affected community members, and another commenter stating that \$25,000 was insufficient to hire qualified technical assistance for larger projects. Other commenters proposed allotments based on a percentage of the BRAC or DERA restoration budget. Suggested amounts were based on one to five percent of the restoration budget. One commenter suggested a determination based upon the total number of RABs expected to make requests versus the available resources.

The Department of Defense must carefully balance available funds with the needs of RABs and TRCs to procure needed technical assistance. In response to the limits suggested by commenters,

and in view of the resources available, the Department of Defense has determined that total technical assistance funding will be limited to \$100,000 per RAB or TRC, with no more than the lesser of 1 percent of the installation's projected restoration cost-to-complete or \$25,000 available during any fiscal year. This amount is consistent with the amounts available for similar purposes under the EPA's TAG/TOSC programs and should be sufficient to obtain meaningful technical assistance for a variety of needs. Limiting funding on the basis of an installation's annual restoration budget is one means available to the Department of Defense for allocating resources among competing facilities. The Deputy Under Secretary of Defense (Environmental Security) may waive the \$100,000 total and \$25,000 annual limitations, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the installation, the level of activity at the installation, projected total needs as identified by the TAPP recipient, the size and diversity of the affected population, and the ability of the TAPP recipient to identify and raise funds from other sources.

In addition to the issue of providing technical assistance to RABs or TRCs, the Department of Defense requested comment on methods of determining priorities among TAPP projects. Two commenters suggested the closure status of the base should affect priority, since these bases tend to be on a fast track cleanup schedule. Other factors that were offered as a basis for prioritization included the severity of the problem or risk associated with a base, the stage of the restoration program at the base, and the proposed use of the money. Commenters did question where the decisionmaking authority would lie for setting priorities among competing funding requests.

In response, the Department of Defense has determined that TAPP projects will be funded upon completion of an eligible TAPP request, in the order received, as available resources permit. In the event that TAPP requests exceed available resources, the Department of Defense Component will consider factors such as closure status, the installation's restoration program status, and alternate sources of assistance in determining funding priorities.

#### H. Additional Services to be Provided Under Option C

The Department of Defense developed a list of public participation services it believes could be provided under

Option C in addition to hiring technical advisors, facilitators, mediators and educators. These services include: translation and interpretation; training; transportation to meetings; and payment of approved travel. The notice solicited comments regarding additional services that should be considered to meet the goal of providing technical assistance to RABs and TRCs and to encourage meaningful public participation.

Although only a limited number of commenters chose to respond to the request for additional services that should be offered, a variety of options were suggested. These included technical support, such as the procurement of independent technical consultants, training, and legal advice, as well as administrative and financial support, such as translation services, reimbursement for postage, phone calls, and travel, community outreach programs, newsletters, stipends for RAB members, and child care.

Because of limitations within the legislation and because resources for RAB and TRC support are limited, the Department of Defense has chosen to focus resources on technical support. The Department of Defense has an interest in promoting partnering with the community members of TRCs and RABs and believes that providing technical assistance will enable them to provide more meaningful input to the restoration process. Technical support, including short-term training, attendance at workshops, and procurement of technical consultants, would be eligible for funding under the program outlined in this rule. Specific eligibility criteria can be found in § 203.11 of this proposed rule. Administrative costs incurred by the RABs and TRCs will continue to be borne by the installation, as is currently the case.

Certain types of legal assistance will not be eligible for funding because they could promote an adversarial relationship between community members and the installation. Specifically, litigation or underwriting legal actions, such as paying for attorney fees or paying for a technical assistance provider to assist an attorney in preparing legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site, will be ineligible for funding. Other types of assistance, such as translation and interpretation, transportation to meetings, and community outreach programs, represent needs of the community at large, and are not limited by RAB membership. As such, they are beyond

the scope of the TAPP funding mechanism.

#### I. Other Comments and Suggestions

Although not specifically requested by the notice for comments, a few commenters suggested additional options for increasing or improving public participation. These included extending assistance to community groups other than RABs or TRCs; providing additional assistance for minority voices on RABs; obtaining peer review from other Federal agencies with relevant technical expertise; providing documents in electronic format to RABs, TRCs, and public repositories; releasing draft documents for review; and using local universities for technical support.

In keeping with the legislation, the Department of Defense is limiting the program announced in this proposed rule to providing technical assistance to community members of TRCs and RABs. The EPA's TAG and TOSC programs are still available for other community groups. The use of assistance provided through the DoD program will be decided by individual RABs and TRCs, given the eligibility criteria specified in § 203.11 of this proposed rule.

Regarding the other suggestions, these are beyond the scope of the current rulemaking and therefore will not be addressed. The Department of Defense, however, notes its continuing efforts to enhance public participation at its facilities and encourages those commenters to pursue innovative ideas for public participation through the RAB process.

#### IV. Regulatory Analysis

##### A. Regulatory Impact Analysis

Under Executive Order 12866 (October 4, 1993, 58 FR 51735), the Department of Defense must determine whether this regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) on the requirements of the Executive Order, under Section 3(f), the order defines a "significant regulation action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering

the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations to recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, the OMB has determined this rule is a "significant regulatory action" because it may raise novel legal or policy issues. As such, this action was submitted to the OMB for review, and any comments or changes made in response to the OMB suggestions or recommendations have been documented in the public record.

#### B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that agencies evaluate the effects of proposed rules for three types of small entities:

(1) Small businesses (as defined in the Small Business Administration regulations);

(2) Small organizations (independently owned, non-dominant in their field, non-profit); and

(3) Small government jurisdictions (serving communities of less than 50,000 people).

The Department of Defense has considered the interests of small businesses and small organizations by means of the use of purchase orders to obtain technical assistance. As stated in the Federal Acquisition Regulations, those purchase orders under \$100,000 are reserved for small businesses, unless it can be demonstrated that small businesses are unable to provide the necessary service or product. Only a limited number of small non-profit organizations are expected to be affected by this program as it is likely that only those non-profit organizations located near Department of Defense installations with ongoing environmental restoration programs will, in most cases, provide the requested technical assistance. The Department of Defense was careful not to impose additional reporting requirements on the public and to stay within the reporting requirements quota for procurements.

Moreover, the Department of Defense has undertaken several activities to help small organizations. The Department of Defense has sought to increase the dollar amount of small purchase orders to simplify the procurement process. The Department of Defense has deliberately written the regulations to encourage small entities to apply.

Given the limited funding available to this program from Congress, and the rationing operation of § 203.4, this rule

is not expected to have a significant economic impact on a substantial number of small entities. The Under Secretary for Acquisition and Technology (USD(A&T)), therefore, certifies that no Regulatory Flexibility Analysis is necessary.

#### C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting and recordkeeping provisions of this proposed rule have been submitted to the OMB for review under § 3507(d) of the Act.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Deputy Under Secretary of Defense for Environmental Security (Environmental Cleanup) announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

**Affected Public:** Not-for-Profit Institutions.

**Annual Burden Hours:** 1,060.

**Number of Respondents:** 265.

**Responses Per Respondent:** 1.

**Average Burden Per Response:** 4 hours.

**Frequency:** On occasion.

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will assist communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the

requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review committees receiving the products and services.

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 715 17th Street, N.W., Washington, DC 20503, marked "Attention Desk Officer for Department of Defense." Copies should be sent to the Office of the Deputy Under Secretary for Environmental Security/Cleanup, 3400 Defense Pentagon, Washington, DC 20301-3400. Comments may also be submitted electronically by sending electronic mail (e-mail) to: ferrebpl@acq.osd.mil.

When the Department of Defense promulgates the Final Rule, the Department will respond to comments by OMB or the public regarding the information collection provisions and recordkeeping requirements of the rule.

#### List of Subjects in 32 CFR Part 203

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

It is proposed to amend Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, by adding part 203 to read as follows:

#### **PART 203—TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) IN DEFENSE ENVIRONMENTAL RESTORATION ACTIVITIES**

Sec.

203.1 Authority.

203.2 Purpose and availability of referenced material.

203.3 Definitions.

203.4 Selected option.

203.5 TAPP process.

203.6 Cost Principles.

203.7 Eligible applicants.

203.8 Ineligible applicants.

203.9 Evaluation criteria.

203.10 Submission of application.

203.11 Eligible activities.

203.12 Ineligible activities.

203.13 Technical assistance for public participation provider qualifications.

203.14 Procurement.

203.15 RAB/TRC reporting requirements.

203.16 Method of payment.

203.17 Record retention and audits.

203.18 Availability of information.

203.19 Conflict of interest and disclosure requirements.

Appendix A to Part 203—Technical Assistance for Public Participation Application Request Form.

Authority: 10 U.S.C. 2705.

**§ 203.1 Authority.**

Part 203 is issued under the authority of section 2705 of Title 10, United States Code. In 1994, Congress authorized the Department of Defense to develop a program to facilitate public participation by providing technical assistance to local community members of TRCs and RABs (section 326 of the National Defense Authorization Act for Fiscal Year 1995, P.L. 103-337). In 1996, Congress revised this authority (section 324 of the National Defense Authorization Act for Fiscal Year 1996, P.L. 104-112). It is pursuant to this revised authority, which is codified as new subsection (e) of section 2705, that the Department of Defense issues this part.

**§ 203.2 Purpose and availability of referenced material.**

(a) This part establishes the Technical Assistance for Public Participation (TAPP) program for the Department of Defense. It sets forth policies and procedures for providing technical assistance to community members of TRCs and RABs established at DoD facilities. This part sets forth the procedures for the Department of Defense to accept and evaluate TAPP applications, to procure the assistance desired by community members of RABs and TRCs, and to manage the TAPP program. These provisions are applicable to all applicants/recipients of technical assistance as specified under the selected option discussed in § 203.4.

(b) Any reference to documents made in this part necessary to apply for TAPP (e.g., the Office of Management and Budget (OMB) Circulars or DoD forms) are available through the DoD installation, the military department headquarters, or from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), 3400 Defense Pentagon, Washington, DC 20301-3400.

**§ 203.3 Definitions.**

As used in this part, the following terms shall have the meaning set forth:

**Affected.** Means subject to an actual or potential health or environmental threat arising from a release or a threatened release at an installation where the Secretary of Defense is planning or implementing environmental restoration activities including a response action under the Comprehensive Environmental Response Compensation and Liability Act as amended (CERCLA), corrective action under the Resource Conservation and Recovery Act (RCRA), or other such laws under applicable Federal or State environmental restoration laws.

This would include actions at active, closing, realigning, and formerly used defense installations. Examples of affected parties include individuals living in areas adjacent to installations whose health is or may be endangered by the release of hazardous substances at the facility.

**Applicant.** Means any group of individuals that files an application for TAPP, limited by this proposal rule to community members of the RAB or TRC.

**Application.** Means a completed formal written request for TAPP that is submitted to the installation commander or to the identified decision authority designated for the installation. A completed application will include a TAPP project description.

**Assistance provider.** Is an individual, group of individuals, or company contracted by the Department of Defense to provide technical assistance under the Technical Assistance for Public Participation program announced in this rule.

**Assistance provider's project manager.** Means the person legally authorized to obligate the organization receiving a TAPP purchase order to the terms and conditions of the Department of Defense's regulations and the contract, and designated by the recipient to serve as the principal contact with the Department of Defense.

**Community member.** Is a member of the RAB or TRC who is also a member of the affected community. For the purpose of this rule, community members to do not include local, State, or Federal government officials acting in any regulatory capacity, nor does it include DoD members.

**Community point of contact.** Is the community member of the RAB or TRC designated in the TAPP application as the focal point for communications with the Department of Defense regarding the TAPP procurement process. The community point of contact is responsible for completing the reporting requirements specified in § 203.15 of this part.

**Contract.** Means a written agreement between the installation or other instrumentality of the Department of Defense and another party for services or supplies necessary to complete the TAPP project. Contracts include written agreements and subagreements for professional services or supplies necessary to complete the TAPP projects, agreements with consultants, and purchase orders.

**Contract officer.** Means the Federal official designated to manage the contract used to fulfill the TAPP request by the RAB or TRC.

**Contractor.** Means any party (e.g., Technical advisor) to whom the installation or other instrumentality of the Department of Defense awards a contract. In the context of this rule, it is synonymous with assistance provider.

**Cost estimate.** Is an estimate of the total funding required for the assistance provider to complete the TAPP project.

**DoD Component.** Includes, but is limited to, the services (Army, Navy, Air Force, Marines, and Reserves) and those defense agencies with an environmental restoration program.

**DoD Installation.** Means a facility that is owned or operated or otherwise possessed by a department, agency, or instrumentality of the United States Department of Defense. In the context of this rule, formerly used defense sites (FUDS) are included within the definition of a DoD Installation.

**EPA.** Means the United States Environmental Protection Agency.

**Formerly Used Defense Site (FUDS).** Is a site that has been owned by, leased to, possessed by, or otherwise under the jurisdiction of the Department of Defense. The FUDS program does not apply to those sites outside the U.S. jurisdiction.

**Firm fixed price contract.** Is a contract wherein funding is fixed, prior to the initiation of a contract, for an agreed upon service or product.

**Purchase order.** Is an offer by the Government to buy supplies or services from a commercial source, upon specified terms and conditions, the total cost of which cannot exceed the small purchase limit of \$100,000. Purchase orders are governed by Federal Acquisition Regulations, 48 CFR part 13, and the Simplified Acquisition Threshold Procedures.

**Restoration Advisory Board (RAB).** Is a group of individuals comprised of representatives of the Department of Defense, community members, and EPA and/or State officials formed to act as a forum for discussion and exchange of information between agencies and the community, and to provide an opportunity for stakeholders to review progress and participate in dialogue with the decision makers. RAB policy was outlined in the joint guidelines published by EPA and the Department of Defense on September 27, 1994, and is described in 32 CFR part 202.<sup>1 2</sup>

**Statement of Work.** Is that portion of a contract which describes the actual

<sup>1</sup> 32 CFR part 202 is the proposed rule on RAB development. It was published on August 6, 1996 (61 FR 40764-40772).

<sup>2</sup> Copies of the Federal Register publication for 32 CFR part 202 are available from the Department of Defense, Office of the Deputy Under Secretary of Defense (Environmental Security).

work to be done by means of specifications or minimum requirements, quantities, performance dates, time and place of performance, and quality requirements. It is key to any procurement because it is the basis for the contractor's response and development of proposed costs.

**TAPP approval.** Signifies that the Department of Defense has approved the eligibility of the proposed TAPP project and will undertake an acquisition to obtain the services specified in the TAPP application submitted by the RAB or TRC. The government will conduct the acquisition in accordance with all of the applicable rules and requirements of the Federal Acquisition Regulations and the Simplified Acquisition Procedures. Approval does not constitute an agreement to direct an award to a specific source if such an action would be contrary to Federal Acquisition Regulations.

**TAPP project description.** Is a discussion of the assistance requested that includes the elements listed in § 203.10 of this part. The project description should contain sufficient detail to enable the Department of Defense to determine the nature and eligibility of the project, identify potential providers and estimate costs, and prepare a statement of work to begin the procurement process.

**Technical assistance.** Encompasses those activities specified in § 203.11 that will contribute to the public's ability to participate in the decision-making process by improving the public's understanding of overall conditions and activities. Technical assistance may include interpreting information such as: the nature of the hazard, including potential health impacts posed by onsite conditions; remedial investigation and feasibility studies; records of decision; remedial designs; selection and construction of remedial actions; operation and maintenance; significant removal actions; and training on technical issues of particular concern to the community members of the RAB or TRC. Technical assistance does not include those activities prohibited under § 203.12, such as litigation or underwriting legal actions; political activity; generation of new primary data such as well drilling and testing, including split sampling; reopening final Department of Defense decisions or conducting disputes with the Department of Defense; or epidemiological or health studies, such as blood or urine testing.

**Technical Review Committee (TRC).** Is a group formed to meet the requirements of 10 U.S.C. 2705(c), Department of Defense Environmental

Restoration Program. Primarily functioning to review installation restoration documents, these committees are being expanded and modified at installations where interest or need necessitates the creation of a RAB.

#### § 203.4 Selected option.

(a) The Department of Defense will issue purchase orders to technical assistance, facilitation, training, and other public participation assistance providers subject to the purchase limit per order as resources continue to be available. If multiple purchase orders are needed to assist community members of a particular RAB or TRC, the combined sum of these purchase orders cannot exceed \$100,000 or, during any one year, the lesser of \$25,000 or 1 percent of the installation's projected restoration cost to complete. Note that these limitations refer to the maximum allowable technical assistance funding per RAB/TRC. Resources available within a given year may vary. These limitations apply unless a waiver is granted by the Deputy Under Secretary of Defense (Environmental Security) (DUSD(ES)). The Deputy Under Secretary of Defense (Environmental Security) may waive the \$100,000 total and \$25,000 annual limitations, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the installation, the level of activity at the installation, projected total needs as identified by the TAPP recipient, the size and diversity of the affected population, and the ability of the TAPP recipient to identify and raise funds from other sources.

(b) Community members of the RAB/TRC will provide a description of the services it is requesting (TAPP Project Description) and, if desired, the names of one or more proposed technical assistance providers to the DoD RAB Co-Chair, who will ensure the application will be submitted to the installation commander or other designated authority and to the appropriate DoD contracting office. Technical assistance providers proposed by the community members of a RAB or TRC at each DoD facility that meet the minimum set of organizational qualifications guidelines provided by the Department of Defense in § 203.13 of this part will be added to the governments list of bidders for the proposed procurement.

#### § 203.5 TAPP process.

This section provides an overview of the TAPP process. Specific details referred to in this section can be found in subsequent sections of this rule.

(a) **TAPP funding.** The DoD budget for support to RABs and TRCs will be established annually. Each DoD Component will be authorized to allocate funds on the basis of the number of RABs or TRCs in operation or in planning stages at the beginning of the fiscal year. Each DoD Component will then make these funds available to their individual installations or facilities on an equitable basis, considering a number of factors related to the restoration program at the installation and its impact upon the community. These factors include, but are not limited to:

- (1) Closure status.
- (2) Budget.
- (3) Installation restoration program status.
- (4) Presence (or absence) of alternate funding.
- (5) Relative risk.
- (6) Type of task to be funded.
- (7) Community concern.
- (8) Available funding.

(b) **Identification of proposed TAPP project.** Eligible applicants of RABs and TRCs, established in § 203.7 and § 203.8 of this part, should determine whether a TAPP project is required to assist the community members of the RAB or TRC to interpret information regarding the nature and extent of contamination or the proposed remedial actions. Eligibility requirements for TAPP projects are described in § 203.11 and § 203.12 of this part. In keeping with the requirements of 10 U.S.C. 2705(e), the RAB or TRC must be able to demonstrate that the technical expertise necessary for the proposed TAPP project is not available through the Federal, State, or local agencies responsible for overseeing environmental restoration at the installation, or that the selection of an alternate provider will contribute to environmental restoration activities and the community acceptance of such activities. In addition, the Department of Defense encourages the RAB or TRC to seek other available avenues of assistance prior to submitting a request for TAPP in order to preserve limited TAPP resources. These sources include tasks appropriate for the installation contractor, the procurement of volunteer services from local universities or other experts, or assistance from state and local health and environmental organizations.

(c) **TAPP project request.** Upon the determination that other sources of assistance are unavailable or unlikely to contribute to the community acceptance of environmental restoration activities at the installation, the RAB or TRC should notify the installation of its intent to pursue TAPP, and should prepare a

formal request specifying the type of assistance required and, if desired, one or more sources for this assistance. Details concerning this request are stated in § 203.10 of this part. The RAB or TRC must certify to the Department of Defense that the TAPP request represents a request by a majority of the community members of the RAB or TRC. The RAB or TRC should ensure that the request meets the eligibility requirements specified in § 203.11 and § 203.12 of this part. Furthermore, the RAB or TRC should outline specific criteria for the Department of Defense to consider in the selection of a provider (such as knowledge of local environmental conditions or specific technical issues, a prior work history within the study area which has relevant specific circumstances or unique challenges, or other relevant expertise or capabilities), keeping in mind that providers must meet the minimum technical qualifications outlined in § 203.13 of this part. The formal request should be submitted to the installation commander or designated decision authority, either directly, or through the DoD member of the RAB. The installation commander, or other designated decision authority, will review the proposed project to determine whether the proposed project conforms to the eligibility requirements.

(d) **Purchase orders.** Upon receipt of a completed TAPP request, the installation will begin the procurement process necessary to obtain the desired services by means of a purchase order or will forward the request to the contracting authority designated by the DoD component to act for that installation. The government is required to follow the rules and regulations for purchase orders as outlined in the Federal Acquisition Regulations. As a result, the government cannot direct awards to a specified supplier unless the procurement is under \$2,500, and then only if the cost is comparable to other suppliers. For procurements over \$2,500 but under \$100,000, the acquisition is reserved for small businesses, unless there is a reasonable expectation that small businesses could not provide the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules. Furthermore, the award must be on a competitive basis. In addition to proposing potential providers, the application for technical assistance should indicate specific criteria or qualifications that are deemed necessary by the RAB/TRC for the completion of

the project to their satisfaction. This information will be used to assist the Department of Defense in preparing a bidders list. The Department of Defense will solicit bids from those providers meeting the criteria and will select a provider offering the best value to the government. Should the procurement process identify more than one qualified respondent or fail to identify any qualified respondents, the RAB/TRC will be consulted prior to the award of a purchase order. If the Department of Defense determines that the TAPP request represents an eligible project for which no funds are available, it will ask the RAB or TRC to specify whether the project should be reconsidered upon the availability of additional funds.

(e) **Reporting requirements.** The applicant must make copies of delivered reports available to the Department of Defense and comply with the reporting requirements established in § 203.15 of this part.

#### § 203.6 Cost principles.

(a) **Non-profit contractors** must comply with the cost principles in OMB Circular A-122.<sup>3</sup>

(b) **Profit-making contractors and subcontractors** must comply with the cost principles in the Federal Acquisition Regulation (48 CFR part 31).

#### § 203.7 Eligible applicants.

Eligible applicants, except as provided in § 203.8 of this part, are community members of RABs or TRCs established in accordance with 32 CFR part 202 (61 FR 40764-40772). Furthermore, the RABs or TRCs must be comprised of at least three community members to ensure community interests are broadly represented. The applicant must certify that the request represents the wishes of a simple majority of the community members of the RAB or TRC. Certification includes, but is not limited to, the results of a roll call vote of community members of the RAB or TRC documented in the meeting minutes. Other requirements of the application are detailed in § 203.10 of this part.

#### § 203.8 Ineligible applicants.

(a) The following groups and organizations are ineligible to receive technical assistance for public participation under this program:

(1) Corporations that are not incorporated for the specific purpose of representing affected individuals at a defense installation.

(2) Academic institutions.

(3) Political subdivisions (e.g., townships and municipalities).

(b) Paragraph (a) of this section does not preclude qualified technical assistance providers that fall under these categories from receiving a purchase order from the government to supply TAPP project services or products.

#### § 203.9 Evaluation criteria.

The Department of Defense will begin the TAPP procurement process only after it has determined that all eligibility and responsibility requirements listed in § 203.6, § 203.7, and § 203.8 of this part are met, and after review of the specific provider qualifications as submitted in the narrative section of the application. In addition, the proposed TAPP project must meet the eligibility criteria as specified in § 203.11 and § 203.12 of this part. Projects that fail to meet those requirements relating to the relevance of the proposed project to the restoration activities at the installation will be denied.

#### § 203.10 Submission of application.

The applicant must submit a TAPP application to begin the TAPP procurement process. The application form is included as Appendix A of this part and can be obtained from the DoD installation, the military department headquarters, or directly from the Department of Defense.<sup>4</sup> The applications will not be considered complete until the following data elements have been entered into the form:

- (a) Installation.
- (b) Source of TAPP request (name of RAB or TRC).
- (c) Certification of majority request.
- (d) RAB/TRC contact point for TAPP project.
- (e) Project title.
- (f) Project type (e.g., data interpretation, training, etc.).
- (g) Project purpose and description (descriptions, time and locations of products or services desired).
- (h) Statement of eligibility of project.
- (i) Proposed provider, if known.
- (j) Specific qualifications or criteria for provider.

#### § 203.11 Eligible activities.

(a) TAPP procurements should be pursued by the RAB or TRC only to the extent that Federal, State, or local agencies responsible for overseeing environmental restoration at the facility do not have the necessary technical expertise for the proposed project, or the

<sup>3</sup> Copies may be obtained from EOP Publications, 725 17th NW, WEOB, DC 20503.

<sup>4</sup> Copies may be obtained from the Department of Defense, Office of the Deputy Under Secretary of Defense (Environmental Security).

proposed technical assistance will contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation and is likely to contribute to community acceptance of those activities.

(b) TAPP procurements may be used to fund activities that will contribute to the community's ability to participate in the decision-making process by improving the community's understanding of overall conditions and activities. Specifically, TAPP procurements may be used to obtain technical assistance in interpreting information with regard to: the nature of the hazard, including potential health impacts posed by onsite conditions; remedial investigation and feasibility study; record of decision; remedial design; selection and construction of remedial action; operation and maintenance; or a significant removal action at an installation where the Secretary of Defense is planning or implementing environmental restoration activities. Also included within additional activities for purposes of enhancing public participation are those activities such as training on technical issues of particular concern to the community members of the RAB or TRC.

#### **§ 203.12 Ineligible activities.**

The following activities are ineligible for assistance under this program:

(a) Litigation or underwriting legal actions such as paying for attorney fees or paying for a technical assistance provider to assist an attorney in preparing legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site.

(b) Political activity and lobbying in accordance with OMB Circular A-122.

(c) Other activities inconsistent with the cost principles stated in OMB Circular A-122, "Cost Principles for Non-Profit Organizations."

(d) Generation of new primary data such as well drilling and testing, including split sampling.

(e) Reopening final DoD decisions such as the Records of Decision (see limitations on judicial review of remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) § 113(h) or conducting disputes with the Department of Defense.

(f) Epidemiological or health studies, such as blood or urine testing.

#### **§ 203.13 Technical assistance for public participation provider qualifications.**

(a) A technical assistance provider must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues and/or laws.

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering, law).

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A technical assistance provider should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems.

(2) Experience in making technical presentations.

(3) Demonstrated writing skills.

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

(c) The technical assistance provider's qualifications will vary according to the type of assistance to be provided. Community members of the RAB/TRC may suggest additional provider qualifications as part of the application for technical assistance. These additional qualifications may be used by the Department of Defense to target the most appropriate providers during the procurement process. Examples of such criteria could include prior work in the area, knowledge of local environmental conditions or laws, specific technical capabilities, or other relevant expertise.

#### **§ 203.14 Procurement.**

Procurements will be conducted as purchase orders in accordance with the Federal Acquisition Regulations 48 CFR part 13. Under these procedures, procurements not exceeding \$100,000 are reserved exclusively for small businesses, and will be conducted as competitive procurements. Procurements below a value of \$2,500 are considered "micro-purchases." These procurements do not require the solicitation of bids and may be conducted at the discretion of the contracting officer.

#### **§ 203.15 RAB/TRC reporting requirements.**

The RAB or TRC shall ensure that all final written documents developed by a technical advisor for the RAB or TRC using resources provided under this rule are disseminated by providing copies of such documents to the DoD installation for the local information repository(ies). Furthermore, the community point of contact of the RAB or TRC must submit a report, to be provided to the installation and to DUSD(ES), to enable

the Department of Defense to meet DoD reporting requirements to Congress. This report should include a description of the TAPP project, a summary of services and products obtained, and a statement regarding the overall satisfaction of the community members of the RAB or TRC with the quality of service and/or products received.

#### **§ 203.16 Method of payment.**

The simplified acquisition procedures set forth in Federal Acquisition Regulations 48 CFR part 13, require purchase orders to be conducted on a firm-fixed-price basis, unless otherwise authorized by agency procedures. The Department of Defense anticipates all TAPP awards to be firm-fixed-price procurements.

#### **§ 203.17 Record retention and audits.**

The recipient contractor(s) shall keep and preserve detailed records in connection with the contract reflecting acquisitions, work progress, reports, expenditures and commitments, and indicate the relationship to established costs and schedules.

#### **§ 203.18 Technical assistance provider reporting requirements.**

Each technical assistance provider shall submit progress reports, financial status reports, and a final report to the Department of Defense for the TAPP project as specified by the specific purchase order agreement. The final report shall document TAPP project activities over the entire period of support and shall describe the achievements with respect to stated TAPP project purposes and objectives.

#### **§ 203.19 Conflict of interest and disclosure requirements.**

The Department of Defense shall require each prospective contractor on any contract to provide, with its bid or proposal:

(a) Information on its financial and business relationship with the installation or any/all potentially responsible parties (PRPs) at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties.

(b) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists.

(c) A statement that it shall disclose immediately any such information discovered after submission of its bid or

after award. The contracting officer shall evaluate such information and shall exclude any prospective contractor if the contracting officer determines the prospective contractor's conflict of interest is significant and cannot be avoided or otherwise resolved. After award, the contract will be terminated, if the contracting officer determines the conflict of interest is significant and cannot be avoided or resolved.

(d) Contractors and subcontractors may not be Technical Advisors to recipient groups at the same installation for which they are doing work for the Federal or State government or any other entity.

BILLING CODE 6000-04-M

## APPENDIX A TO PART 203

TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) APPLICATION		Form Approved OMB No. 0704-0392 Expires Dec 31, 1999	
<p>The public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0392), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p>			
PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO INSTALLATION LISTED IN SECTION I, BLOCK 1.			
SECTION I - TAPP REQUEST SOURCE IDENTIFICATION DATA			
1. INSTALLATION			
2. SOURCE OF TAPP REQUEST (Name of Restoration Advisory Board (RAB) or Technical Review Committee (TRC))			
3. CERTIFICATION OF MAJORITY REQUEST		4. DATE OF REQUEST (YYYYMMDD)	
5. RAB POINT OF CONTACT			
a. NAME (Last, First, Middle Initial)		b. ADDRESS (Street, Apt. or Suite Number, City, State, ZIP Code)	
c. TELEPHONE NUMBER (include Area Code)			
SECTION II - TAPP PROJECT DESCRIPTION			
6. PROJECT TITLE			
7. PROJECT TYPE (Data Interpretation, Training, etc.)			
8. PROJECT PURPOSE AND DESCRIPTION (State anticipated goals of project and relate to increased understanding/participation in restoration process at the installation. Include descriptions, locations, and timetables of products or services requested.)			
9. STATEMENT OF ELIGIBILITY (Refer to eligibility criteria in S203.11 and S203.12 of TAPP rule. Note other sources that were considered for this support and state reasons why those sources are inadequate.)			
10. ADDITIONAL QUALIFICATIONS OR CRITERIA TO BE CONSIDERED (Additional qualifications beyond those specified in S203.13 a provider should demonstrate to perform the project to the satisfaction of the RAB/TRC. Attach separate statements, if necessary.)			
SECTION III - INSTALLATION COMMANDER/DESIGNATED DECISION AUTHORITY APPROVAL			
APPROVED	11. SIGNATURE	12. TITLE	13. DATE (YYYYMMDD)
NOT APPROVED			

SECTION IV - PROPOSED PROVIDER DATA			
<b>14. PROPOSED PROVIDER</b>			
<b>a. NAME</b>		<b>b. ADDRESS (Street, Apt. or Suite Number, City, State, ZIP Code)</b>	
<b>c. TELEPHONE NUMBER (include Area Code)</b>			
<b>15. PROVIDER QUALIFICATIONS (Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)</b>			
<b>16. ALTERNATE PROPOSED PROVIDER (If known. Attach additional pages as required.)</b>			
<b>a. NAME</b>		<b>b. ADDRESS (Street, Apt. or Suite Number, City, State, ZIP Code)</b>	
<b>c. TELEPHONE NUMBER (include Area Code)</b>			
<b>17. ALTERNATE PROVIDER QUALIFICATIONS (Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)</b>			
SECTION V - CONTRACTING OFFICE APPROVAL			
<input type="checkbox"/>	APPROVED	<b>18. SIGNATURE</b>	<b>19. TITLE</b>
<input type="checkbox"/>	NOT APPROVED		<b>20. DATE (YYYYMMDD)</b>

Dated: December 12, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison  
Officer, Department of Defense.

[FR Doc. 96-32130 Filed 12-26-96; 8:45 am]

BILLING CODE 5000-04-C

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 110

[CGD01-96-119]

#### Special Anchorage Area: Special Anchorage Sheepshead Bay, Brooklyn, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposed to amend the Sheepshead Bay special anchorage regulations by reducing the size of the northern area to accommodate the construction of a floating restaurant.

**DATES:** Comments must be received on or before February 25, 1997.

**ADDRESSES:** Comments should be mailed to Lieutenant John W. Green, Waterways Oversight Branch, Coast Guard Activities New York, Bldg. 108 Governors Island, New York 10004-5096.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant John W. Green, Waterways Oversight Branch, Coast guard Activities New York (212) 668-7906.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01-96-119) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Waterways Oversight Branch at the address under ADDRESSES. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place

announced by a later notice in the Federal Register.

#### Background and Purpose

The Hastings Design Group is developing plans to construct a floating restaurant in Sheepshead Bay. As planned, the floating restaurant extends into the northern area of the Sheepshead Bay special anchorage defined in 33 CFR 110.60(x)(2). Special anchorages are areas of water in which vessels of not more than 65 feet in length may anchor without exhibiting anchor lights. The proposed rule would change the boundaries of the special anchorage by moving the eastern boundary line so that no portion of the restaurant is within the special anchorage. The new eastern boundary line would be relocated to a line parallel to and 80 feet west of the prolonged west line of Coyle Street. This configuration would allow for the floating restaurant to project a maximum of 80 feet west of the prolonged west line of Coyle Street, and will allow for an area 45 feet wide for vessel traffic to transit to and from the anchorage west of the floating restaurant. Moving the eastern boundary line would eliminate four moorings from the special anchorage under the existing mooring field plan. However, the owner of the floating restaurant has agreed to make four berths available at the restaurant pier to the New York City, Department of Parks and Recreation to offset the loss of moorings from the special anchorage. These four berths will be administered by the Department of Parks and Recreation as part of the entire special anchorage.

#### Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Although the proposed boundary change would decrease the size of the northern area of the Sheepshead Bay special anchorage, the effect of this regulation would not be significant for the following reasons: the owner of the floating restaurant will provide four permanent moorings to be administered by the New York City,

Department of Parks and Recreation as part of the special anchorage, and a 45 foot fairway will be established so vessel traffic can safely access the special anchorage west of the floating restaurant.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization, qualifies as a small entity and that this rule will have significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

#### Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

#### Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(34)(f) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994) this rule reduces the size of a special anchorage and is categorically excluded from further environmental documentation.

#### List of Subjects in 33 CFR 110

Anchorage grounds.