



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000



ACQUISITION AND
TECHNOLOGY

26 MAY 1995

DUSD(ES)/CL

MEMORANDUM FOR RESTORATION ADVISORY BOARD (RAB) MEMBERS

SUBJECT: Technical Assistance for Public Participation in the Defense Environmental Restoration Program--Federal Register Notice of Request for Comments

The FY1995 National Defense Authorization Act gave DoD new authority to provide technical assistance funding to citizens affected by the environmental restoration of DoD facilities. A working group comprised of representatives of the Secretary of Defense, the military departments and defense agencies has been working over the past 6 months to identify options for providing this assistance. The working group identified three options:

- Option A: Use EPA's Technical Assistance Grant Mechanism
- Option B: Procure One or More Technical Assistance Providers
- Option C: Issue Purchase Orders to Assistance Providers.

The enclosed Federal Register Notice describes each option, and solicits comments from the public. Comments are due by July 24, 1995. Once comments are considered, and we identify a preferred option, we intend to publish in the Federal Register, an interim rule outlining how citizens may apply for technical assistance.

Since you are involved in a Restoration Advisory Board (RAB), I felt you should have a copy of the notice, for information, and comment should you choose to do so. Please share this notice with others who may want to comment, especially the community co-chair of your RAB, and other citizen members.

Patricia L. Funder
m

Patricia A. Rivers
Assistant Deputy Under Secretary of Defense
(Environmental Cleanup)

Enclosure

cc: Community RAB Members



KAFB1624



HS-A KAFB 01/12/95

expense of \$200,000 on research to test a product in response to requirements imposed by the United States Food and Drug Administration (FDA). X is able to show that, even though country Y imposes certain testing requirements on pharmaceutical products, the research performed in the United States is not accepted by country Y for purposes of its own licensing requirements, and the research has minimal use abroad. X is further able to show that its FSC sells goods to countries which do not accept or do not require research performed in the United States for purposes of their own licensing standards.

(ii) *Allocation.* Since X's research expense of \$200,000 is undertaken to meet the requirements of the United States Food and Drug Administration, and since it is reasonable to expect that the expenditure will not generate gross income (beyond *de minimis* amounts) outside the United States, the deduction is definitely related and thus allocable to the residual grouping.

(iii) *Apportionment.* No apportionment is necessary since the entire expense is allocated to the residual grouping, general limitation gross income from sales within the United States.

Example 8—Research and Experimentation—(i) Facts. X, a domestic corporation, is engaged in continuous research and experimentation to improve the quality of the products that it manufactures and sells, which are floodlights, flashlights, fuse boxes, and solderless connectors. X incurs and deducts \$100,000 of expenditure for research and experimentation in 1997 which was performed exclusively in the United States. As a result of this research activity, X acquires patents which it uses in its own manufacturing activity. X licenses its floodlight patent to Y and Z, uncontrolled foreign corporations, for use in their own territories, countries Y and Z, respectively. Corporation Y pays X an arm's length royalty of \$3,000 plus \$0.20 for each floodlight sold. Sales of floodlights by Y for the taxable year are \$135,000 (at \$4.50 per unit) or 30,000 units, and the royalty is \$9,000 (\$3,000+\$0.20×30,000). Y has sales of other products of \$500,000. Z pays X an arm's length royalty of \$3,000 plus \$0.30 for each unit sold. Z manufactures 30,000 floodlights in the taxable year, and the royalty is \$12,000 (\$3,000+\$0.30×30,000). The dollar value of Z's floodlight sales is not known and cannot be reasonably estimated because, in this case, the floodlights are not sold separately by Z but are instead used as a component in Z's manufacture of lighting equipment for theaters. The sales of all Z's products, including the lighting equipment for theaters, are \$1,000,000. Y and Z each sell the floodlights exclusively within their respective countries. X's sales of floodlights for the taxable year are \$500,000 and its sales of its other products, flashlights, fuse boxes, and solderless connectors, are \$400,000. X has gross income of \$500,000, consisting of gross income from domestic sources of \$479,000, and royalty income of \$9,000 and \$12,000 from foreign corporations Y and Z respectively.

(ii) *Allocation.* X's research and experimental expenses are definitely related

to all of the products that it produces, which are floodlights, flashlights, fuse boxes, and solderless connectors. All of these products are in the same three digit SIC Code category, Electric Lighting and Wiring Equipment (SIC Industry Group 364). Thus, X's research and experimental expenses are allocable to all items of income attributable to this product category, domestic foreign income and royalty income from the foreign countries in which corporations Y and Z operate.

(iii) *Apportionment.* (A) The statutory grouping of gross income is general limitation income from sources without the United States. The residual grouping is general limitation gross income from sources within the United States. X's deduction of \$100,000 for its research expenditures must be apportioned between the groupings. For apportionment on the basis of sales in accordance with paragraph (e)(3)(ii) of this section, X is entitled to an exclusive apportionment of 50 percent of its research and experimental expense to the residual grouping, general limitation gross income from sources within the United States, since more than 50 percent of the research activity was performed in the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales. Since Y and Z are unrelated licensees of X, only their sales of the licensed product, floodlights, are included for purposes of apportionment. Floodlight sales of Z are unknown, but are estimated at ten times royalties from Z, or \$120,000. All of X's sales from the entire product category are included for purposes of apportionment on the basis of sales. Alternatively, X may apportion its deduction on the basis of gross income, in accordance with paragraph (e)(3)(iii) of this section. The apportionment is as follows:

(1) *Tentative Apportionment on the basis of sales.*

(i) Research and experimental expense to be apportioned between statutory and residual groupings of gross income: \$100,000.

(ii) Less: Exclusive apportionment of research and experimental expense to the residual groupings of gross income (\$100,000 x 50 percent): \$50,000.

(iii) Research and experimental expense to be apportioned between the statutory and residual groupings of gross income on the basis of sales: \$50,000.

(iv) Apportionment of research and experimental expense to the residual groupings of gross income (\$50,000×\$900,000/(\$900,000+\$135,000+\$120,000)): \$38,961.

(v) Apportionment of research and experimental expense to the statutory grouping, royalty income from countries Y and Z (\$50,000×\$135,000+\$120,000/(\$900,000+\$135,000+\$120,000)): \$11,039.

(vi) Total apportioned deduction for research and experimentation: \$100,000.

(vii) Amount apportioned to the residual grouping (\$50,000+\$38,961): \$88,961.

(viii) Apportioned to the statutory grouping of sources within countries Y and Z: \$11,039.

(2) *Tentative apportionment on gross income basis.*

(i) Apportionment of research and experimental expense to the residual

grouping of gross income (\$100,000×\$479,000/\$500,000): \$95,800.

(ii) Apportionment of research and experimental expense to the statutory grouping of gross income (\$100,000×\$9,000+\$12,000/\$500,000): \$4,200.

(iii) Amount apportioned to the residual grouping: \$95,800.

(iv) Amount apportioned to the statutory grouping of general limitation income from sources without the United States: \$4,200.

(B) Since X's apportionment on the basis of gross income to the statutory grouping, \$4,200, is less than 50 percent of its apportionment on the basis of sales to the statutory grouping, \$11,039 it may use Option two of paragraph (e)(3)(iii)(B) of this section and apportion \$5,520 (50 percent of \$11,039) to the statutory grouping.

Examples (9) through (16)—[Reserved]

Example (23)—[Reserved]

Margaret Milner Richardson,
Commissioner of Internal Revenue.
[FR Doc. 95-12621 Filed 5-19-95; 9:25 am]
BILLING CODE 4830-01-4

Office of the Secretary

32 CFR Part 203

Technical Assistance for Public Participation

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

ACTION: Notice of request for comments.

SUMMARY: Consistent with section 326 of The National Defense Authorization Act for Fiscal Year 1995 (NDAA-95), the Department of Defense intends to publish interim rules for providing technical assistance funding to citizens affected by the environmental restoration of Department of Defense facilities. This request for comments discusses and solicits comments on several options the Department of Defense is considering for providing assistance to community members of Technical Review Committee (TRCs) and Restoration Advisory Boards (RABs) to obtain technical advisors and facilitate the participation of these members and affected citizens in environmental restoration activities at their associated installations. The Department of Defense will consider these comments in formulating an Interim Final Rule.

DATES: Written comments must be received on or before July 24, 1995.

ADDRESSES: Send written comments to the Office of the Deputy Under Secretary of Defense for Environmental Security/Cleanup, 3400 Defense Pentagon, Washington, DC 20301-3400.

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

SUPPLEMENTARY INFORMATION: Today's request for comments has the following sections:

- I. Background
- II. Options for Providing Assistance
- III. Requests for Comments

I. Background

The Department of Defense is engaged in environmental investigations, removal actions, treatability studies, community relations efforts, interim remedial actions, cleanups, and operation and maintenance activities at approximately 1800 active installations, 70 closing installations, and 2200 formerly utilized defense properties in the United States under the Defense Environmental Restoration Program (DERP, 10 USC Chapter 160).

The Department of Defense has issued policy for establishing Restoration Advisory Boards (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 Base Realignment and Closure (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 Department of Defense installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are: (1) A government requests that a RAB be formed; (2) fifty local residents sign a petition requesting that a RAB be formed; or (3) an installation determines that a RAB is needed. 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. The guidelines are now in effect for all installations.

The purpose of a RAB is to bring together people who reflect the diverse interests within the local community, enabling the early and continual flow of information between the affected community, the military installation, and environmental oversight agencies.

The Department of Defense has established, or is in the process of establishing, RABs to ensure that all stakeholders have a voice and can actively participate in a timely and thorough manner in the review of environmental restoration activities and projects at an installation. RAB community members provide advice as individuals to the decision-makers on restoration issues. This forum is used for the expression and careful consideration of diverse points of view. The RAB complements other community involvement efforts, but does not replace them.

On October 5, 1994, Congress passed the National Defense Authorization Act for Fiscal Year 1995 (NDAA-95, Public Law 103-337), which contained specific provisions for RABs (amending 10 USC 2705 which contains requirements for Technical Review Committees (TRCs) under the Superfund Amendments and Reauthorization Act). Section 326(a) [Section 2705(d)(2)] of the NDAA-95 requires the Secretary of Defense to prescribe regulations on the characteristics, composition, funding, and establishment of RABs. Section 326(b) of the NDAA [Section 2705(e)(2)(C)] authorizes the Department of Defense to make funds available to community members of TRCs and RABs to: (1) Obtain technical assistance in interpreting scientific and engineering issues with regard to the nature of environmental hazards at an installation and the restoration activities proposed for or conducted at the installation; and (2) assist such members and affected citizens to participate more effectively in environmental restoration activities at the installation. Section 326(b) [Section 2705(e)(3)(A) and (B)] specifies that funds for community members of TRCs and RABs at closing and non-closing installations be provided from the BRAC and Defense Environmental Restoration Account (DERA), respectively, and that the total amount of funds from these accounts not exceed \$7,500,000. This paragraph [Section 2705(e)(2)(B) and (C)] further states that funding can be given to TRC and RAB members only if they reside in the vicinity of the installation and are not potentially responsible parties.

The Department of Defense has developed a number of options for providing technical and public participation assistance to community members of TRCs and RABs. The Department of Defense is issuing this request for comments to notify the public of its efforts, and to solicit comments on a number of promising funding options. The Department of Defense will publish an interim rule

specifying available funding mechanisms after considering any comments received.

II. Options for Providing Assistance

The Department of Defense is seeking to provide technical and public participation assistance to community members of TRCs and RABs at its facilities in the most efficient manner. Technical assistance under this program means the provision of technical advisors, facilitators, mediators, and educators. Public participation assistance means the provision of training and related expenses. Three options are being considered for providing expeditious assistance to TRCs and RABs. These options are described separately in the following sections, but are not mutually exclusive.

Option A: Use EPA TAG and TOSC Mechanisms

This option for providing assistance to community members of TRCs and RABs at Department of Defense facilities involves the use of existing vehicles under EPA's Technical Assistance Grant (TAG) and Technical Outreach Services to Communities (TOSC) program. The TAG program provides funds for qualified citizens' groups affected by a site on EPA's National Priorities List (NPL) to hire independent technical advisors to help interpret and comment on site-related information. Under this option, the Department of Defense and EPA would sign a Memorandum of Understanding (MOU) authorizing EPA to provide additional assistance to community organizations subject to existing TAG regulations. EPA Regional TAG specialists would provide outreach to community members of TRCs, RABs, or other members of the community desiring technical assistance and would assist them throughout the application process and during the post-award administration phase. The Department of Defense would reimburse EPA for all awarded TAGs at Department of Defense facilities. Under this option, community members at NPL installations would obtain funds directly for technical assistance. Under this option, the TAG regulations published in the Federal Register on October 1, 1992, page 45311 through 45321, and recorded in 40 CFR Part 35, Subpart M, would be followed. These regulations allow for one TAG award per NPL facility but would not preclude the same community group from applying for additional technical assistance.

The TOSC is a pilot program funded by EPA to provide communities affected by hazardous waste sites with a variety of technical support services. The TOSC

program complements EPA's TAG program by serving as a mechanism for providing technical assistance to communities near non-NPL hazardous waste sites. The TOSC program provides services to communities through five geographically-based Hazardous Substance Research Centers (HSRCs) created in 1986. Each HSRC is a consortium of universities which supports two EPA Regions (i.e. Regions 1&2, 3&4, 5&6, 7&8, 9&10). Each HSRC provides independent technical resources and services that are flexible and tailored to the identified needs of a community. HSRC researchers and professionals are available to conduct technical and educational programs in a community, assist in the review of technical documents, provide comments on proposed actions, and answer questions. Under this option, the Department of Defense and EPA would sign an MOU that makes the TOSC program available to community members of TRCs, RABs, and other community groups through EPA Superfund Regional Community Relations Staff. EPA Regional Community Relations Staff would provide outreach near a Department of Defense facility to community members desiring TOSC support, would review proposals for assistance from community members, and would work with them throughout the approval and post-approval process. The Department of Defense would reimburse EPA for TOSC service rendered. Under this option, community members of TRCs and RABs at non-NPL installations would obtain technical advisors and related services from designated HSRCs.

Option B: Procure One or More Technical Assistance Providers

This option 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 Department of Defense facilities. This assistance would be above the administrative support to TRCs and RABs already provided by the installations. One or more technical assistance providers would provide this assistance and would carry out many of the administrative and financial management requirements associated with a technical and public participation assistance program. An announcement, a procurement for technical assistance providers, would be made via the Federal Register in conjunction with the publication of the Interim Final Rule mentioned in Section I. Actual awards to one or more

qualified technical assistance providers would be made via grants or cooperative agreements based on the results of an independent selection process. Recent experience with a similar grants process in the Department of Defense suggests that this option will involve a five or six month procurement process beginning with a formal announcement of a competition in the Federal Register and ending with awards to technical assistance providers.

At a later date, the Department of Defense plans a Federal Register announcement requesting expressions of interest to serve as a technical assistance provider. As indicated in that announcement, the technical assistance provider would provide technical assistance and public participation assistance to community members of TRCs and RABs. The provider would be responsible for receiving, evaluating, and making recommendations on applications from RABs for support and for providing the applications to the appropriate DoD approving official based on DoD established criteria. Once the approving official has selected the applications, the technical assistance provider would assume full responsibility for ensuring that the technical services and public participation support provided are delivered in a timely and effective manner to community members of TRCs and RABs, and that all funds are managed and dispersed in full compliance with appropriate Department of Defense regulations. The technical assistance provider would be responsible for supporting TRC and RAB requests nationwide or within a particular geographic area. Minimum qualifications for a technical assistance provider are:

- (1) Perceived as neutral and credible.
- (2) Either have or be able to obtain an interdisciplinary staff with demonstrated expertise in hazardous substance remediation, investigation, management and/or research.
- (3) Management capability, for both financial and scientific management, and a demonstrated skill in planning and scheduling projects of comparable magnitude to that discussed in this Announcement.
- (4) Ability to provide facilitation and mediation services.
- (5) Knowledge and experience in environmental restoration activities preferably at federal facilities.
- (6) A demonstrated ability to disseminate results of hazardous substance information through an interdisciplinary program to locally affected and concerned citizens.

(7) The ability to perform the required tasks either nationally or within a defined geographic area.

(8) Not-for-profit.

Under this option, community members of TRCs and RABs would be responsible for making requests to the community co-chair or designated members of the TRC or RAB responsible for applying to the designated technical assistance provider for assistance and for preparing facility specific statements describing the type and level of support requested. The technical assistance provider would be responsible for allocating available resources among these competing requests using general guidelines and established criteria provided by Department of Defense.

Option C: Issue Purchase Orders to Assistance Providers

This option would involve the issuance of purchase orders to technical and public participation assistance providers up to the allowable government purchase limit per purchase order (now at \$25,000). If multiple purchase orders were needed to assist community members of a particular TRC or RAB, the combined sum of these purchase orders could not exceed a specified allotment. Qualified assistance providers would be selected by the community members of a TRC or RAB at each Department of Defense facility using guidelines provided by the Department of Defense. Under this option, community members of the TRC or RAB would provide a description of the services it is requesting to a Department of Defense contracting office, along with a cost estimate, and would identify the assistance provider and the provider's statement of qualifications. A minimum set of organizational qualifications for receiving a purchase order would be specified under this option by the Department of Defense. These qualifications would be promulgated as part of an Interim Final Rule.

Under all options described in the preceding sections, the local installations will continue to be responsible for providing administrative support in accordance with joint EPA and Department of Defense Restoration Advisory Board Implementation Guidelines issued September 27, 1994.

III. Requests for Comments

Today the Department of Defense solicits comments on the options for providing technical and public participation assistance to community members of RABs or TRCs. Each of the options described in Section II of this notice have strengths and weaknesses.

Option A is the most timely option with the advantage of using existing EPA mechanisms to provide support, but also has the attached limitations of the TAG and TOSC programs as to the type of support which could be provided. Option B would procure independent technical assistance providers for the program and would relieve community members of TRCs and RABs of much of the administrative burden associated with managing government grants; however, it requires the time needed for a competitive procurement and does not provide the funds directly to community members of TRCs and RABs. Option C allows greater control and flexibility by community members, but imposes greater administrative burdens on community members of TRCs and RABs and on the contracting office issuing the purchase order. The Department of Defense is interested in determining the opinions of affected citizens and groups on these options. This would include preferences for particular options over others. It would also include comments on the individual options and the components of those options as described in Section II. There also exists the possibility of combining one or more of the Section II options. The Department of Defense solicits any comments or suggestions regarding option combinations. The Department of Defense also solicits comments on specific aspects of each option as well as on additional options desired to provide for technical and public participation assistance.

Within the options are specific items for which the Department of Defense solicits comments. These include the qualifications given for the independent technical assistance providers described in Option B. Comments on either the list of qualifications provided or on additional qualifications which should be added are encouraged. Both Options A and B have provisions for the division of the country into geographic areas with different service providers for each area. Do those commenting have preferences regarding nationwide versus regionalized coverage by service providers for these options? All options will be subject to an allotment cap. Do those commenting have suggestions as to the size of such a cap or the criteria which should be used to establish a cap? The Department of Defense has developed a list of public participation services it believes should be provided under Options B and C in addition to hiring technical advisors, facilitators, mediators and educators. These services are: translation and interpretation; training; transportation to meetings; and

payment of approved travel. Comments on these or other services to be included under Options B and C are encouraged.

Dated: May 18, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-12628 Filed 5-23-95; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13-90-028]

RIN 2115-AE06

Regulated Navigation Area: Puget Sound and Strait of Juan de Fuca, WA; Grays Harbor, WA; Columbia River & Willamette River OR; Yaguina Bay, OR; Umpqua River, OR; Coos Bay, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to adopt regulations requiring an emergency tow-wire on tank barges while transiting certain port areas of the Pacific Northwest. The project is no longer necessary because the Coast Guard issued separate regulations on December 22, 1993, which require an emergency tow wire or tow line on all offshore oil barges. The Coast Guard is therefore terminating further rulemaking under docket number CGD13-90-028.

FOR FURTHER INFORMATION CONTACT: LCDR J. Bigley or LTJG M. L. Kammerer, Thirteenth Coast Guard District, Port Safety and Security Branch, (206) 220-7210.

SUPPLEMENTARY INFORMATION: On May 22, 1990, the Coast Guard published a "Request for comments; notice of hearing" at 55 FR 21044 seeking public comment on six navigation safety initiatives for port areas in the Pacific Northwest. These six safety initiatives involved the use of tug escorts, emergency towing plans, speed criteria, additional bridge personnel, emergency tow-wire requirements for tank barges, and requirements for extended pilotage. A public hearing was held on June 22, 1990, in Seattle, Washington, to hear comments on the six initiatives and alternative courses of action. The comments pertaining to emergency tow-wire requirements for tank barges were addressed and incorporated in a notice of proposed rulemaking (NPRM) published on October 24, 1991 at 56 FR 55104.

The rule proposed by the October 24, 1991, NPRM would have required all tank barges to carry an emergency tow-wire while transiting certain port areas of the Pacific Northwest. This rule was proposed in response to the growing concerns of the citizens of Washington and Oregon that regulatory action was necessary to prevent the discharge of oil or other hazardous substances during transportation. The proposed rule was intended to enhance navigation safety, thereby reducing the risk of pollution and environmental damage from collisions and groundings.

Subsequent to publication of the October 24, 1991 NPRM, the Coast Guard issued regulations requiring that all offshore oil barges carry an emergency tow wire or tow line (December 22, 1993, 58 FR 67988). These separate regulations became effective on January 21, 1994, and are codified at 33 CFR 155.230. Because these separate regulations adequately addressed the same issue addressed by the proposed rule, the proposed rule has become unnecessary, and the Coast Guard is terminating further rulemaking under docket number CGD13-90-028.

Dated: May 16, 1995.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 95-12735 Filed 5-23-95; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY-93-6927b; FRL-51848-8]

Approval and Promulgation of Implementation Plans State: Kentucky Approval of Revisions to State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the state implementation plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet). This revision will incorporate into the SIP an operating permit issued to the Calgon Carbon Corporation located in the Kentucky portion of the Ashland/Huntington ozone (O₃) nonattainment area. This permit will reduce the emissions of volatile organic compounds (VOCs) by requiring reasonably available control technology