

[Federal Register: May 12, 2006 (Volume 71, Number 92)]
[Rules and Regulations]
[Page 27610-27621]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr12my06-12]

=====

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 202

[DoD-2006-OS-0077; 0790-AG31]

Department of Defense Restoration Advisory Boards

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is promulgating the Restoration Advisory Board (RAB) rule regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. This rule implements the requirement established in 10 U.S.C. 2705(d)(2)(A), which requires the Secretary of Defense to prescribe regulation regarding RABs. This rule is based on DoD's current policies for establishing and operating RABs, as well as the Department's experience over the past ten years.

DATES: This rule is effective May 12, 2006.

FOR FURTHER INFORMATION CONTACT: For specific questions or to request an opportunity to review the docket for this rulemaking, please contact Ms. Patricia Ferree, Office of the Deputy Under Secretary of Defense (Installations & Environment), 703-571-9060. This final rule, along with relevant background information, is available on the World-Wide Web at the Defense Environmental Network and Information eXchange Web site at <https://www.denix.osd.mil/rabrul>.

SUPPLEMENTARY INFORMATION:

Preamble Outline

- I. Authority
- II. Background
- III. Summary of Significant Changes to the Final Rule
- IV. Response to Comments
- V. Administrative Requirements
 - A. Regulatory Impact Analysis Pursuant to Executive Order 12866
 - B. Regulatory Flexibility Act

- C. Unfunded Mandates
- D. Paperwork Reduction Act
- E. National Technology Transfer and Advancement Act
- F. Environmental Justice Requirements Under Executive Order 12898
- G. Federalism Considerations Under Executive Order 13132

I. Authority

This rule is being finalized under the authority of Section 2705 of Title 10, United States Code (U.S.C.).

II. Background

The Department of Defense (DoD) published the Restoration Advisory Board (RAB) rule in the Federal Register as a proposed rule on January 28, 2005 (70 FR 4061) in 32 U.S. Code of Federal Regulations (CFR) Part 202. The public comment period for the proposed rule ended March 29, 2005. Thirty-four commenters submitted comments on the proposed rule. The preamble to this final rule consists mainly of an explanation of the Department's responses to these comments. Therefore, both this preamble and the preamble to the proposed rule should be reviewed should a question arise as to the meaning or intent of the final rule. Unless directly contradicted or superseded by this preamble to the rule or by the rule, the preamble to the proposed rule reflects DoD's intent for the rule.

The preamble to the final rule provides a discussion of each proposed rule section on which comments were received. Revisions to the proposed rule that are simply editorial or that do not reflect substantive changes are not addressed in this preamble. All comments the Department received are presented in a ``Response to Comments'' document, which has been placed in the docket for this rulemaking.

DoD recognizes the importance of public involvement at military installations. For the purposes of this rule, the term installation means operating and closing DoD installations and formerly used defense sites (FUDS) that reacquire environmental restoration. DoD has developed community involvement policies to ensure that local communities are provided the opportunity as early as possible to obtain information about, and provide input to, the decisions regarding environmental restoration activities at military installations. It is DoD policy to provide the public with the ability to participate in these activities through the establishment of RABs, among other public involvement opportunities.

Based on statutory and regulatory requirements for community

[[Page 27611]]

involvement and recommendations from the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC), DoD has strengthened its community involvement efforts, including the RAB initiative, under its environmental restoration program. DoD believes that working in partnership with local communities and addressing the concerns of those communities early in the restoration process has enhanced its efforts under, and increased the credibility of, the environmental restoration program. The Department remains committed to involving communities near DoD installations in environmental restoration decision-making processes that may affect human health,

safety and the environment.

RABs have become a significant component of DoD's efforts to increase community involvement in the environmental restoration program. RABs provide a continuous forum through which members of affected communities can provide input to an installation's ongoing environmental restoration activities. RAB members provide recommendations regarding environmental restoration to DoD. RABs are not Federal Advisory Committees and are specifically excluded from the requirements of the Federal Advisory Committee Act (10 U.S.C. 2705(d)(2)), however, DoD does meet its substantive requirements.

On September 27, 1994, DoD and the Environmental Protection Agency (EPA) jointly issued guidelines for the formation and operation of RABs ('`Restoration Advisory Board Implementation Guidelines''). The guidelines describe how to implement the DoD RAB policy and identify each stakeholder's role within the RAB. The guidelines also state that existing Technical Review Committees (TRCs) or similar groups may be expanded or modified to become RABs, and that RABs may fulfill the statutory requirements for establishing TRCs (10 U.S.C. 2705(d)(1)) at installations undergoing environmental restoration).

As of September 30, 2004, DoD reported the existence of 310 active RABs across all of the Military Component's installations. Over the past several years, the number of RABs has remained fairly consistent, although the number fluctuates as some RABs adjourn and others form. RABs are one part of DoD's and the Military Components' extensive community outreach and public participation activities, which include compliance with the public notice and participation requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act, and other Federal and state environmental laws, as well as considerable consultation with DoD partners at Federal, state, and local government agencies.

A RAB may only address issues associated with environmental restoration activities under the Defense Environmental Restoration Program (DERP) at DoD installations, including activities conducted under the Military Munitions Response program (MMRP) to address unexploded ordnance, discarded military munitions, and the chemical constituents of munitions. If a RAB already exists at an installation and MMRP sites are identified, the RAB may be expanded to consider additional issues related to the MMRP sites. If the current RAB or DoD installation decides that it is necessary to involve new stakeholders, the installations should notify potential stakeholders of its intent to expand the RAB and solicit new members who have an interest in issues related to the MMRP. If there is no current RAB active at the installation and MMRP sites are identified, the installation will follow the prescribed guidance for determining sufficient community interest in forming a RAB.

The Secretary of Defense is required to ``prescribe regulations regarding the establishments, characteristics, composition, and funding of Restoration Advisory Boards'' (10 U.S.C. 2705(d)(2)(A)). DoD's issuance of the RAB rule is not, however, a precondition to the establishment of RABs (10 U.S.C. 2705(d)(2)(B)). Therefore, DoD provides the RAB rule regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. DoD recognizes that each RAB established will be a unique organization dealing with installation-specific issues. This rule is consistent with the recommendations set forth in the FFERDC's Final Report and reflects over ten years of experience in establishing and operating RABs throughout the United States. DoD has structured

this proposal to maximize flexibility for RAB members and installations nationwide.

III. Summary of Significant Changes to the Final Rule

The Department of Defense has made no significant changes to the RAB final rule.

IV. Response to Comments

The Department received many comments on the proposed rule. Many comments were supportive of the proposed rule and the role of RABs in public participation. In particular, commenters believed that the rule provides standards that are comprehensive yet flexible enough to address the 310 active RABs operating at DoD installations across the nation. This section contains the Department's responses to the comments received on the proposed rule, organized by the structure of the proposed and final rules.

A. 202.1 Purpose, Scope, Definitions, and Applicability

The Department received several comments requesting that the scope of RABs be modified to include additional community concerns outside of environmental restoration activities under the DERP. Although RABs have been identified as a successful forum for public discussion of community concerns, DoD funds RABs with money dedicated to supporting environmental restoration activities under the DERP. The Department cannot justify the discussion of issues outside the activities of the DERP with this same funding source. DoD continues to encourage installations to assist the RABs in finding the proper venue to support a broader scope of issues. One commenter requested that the text in the preamble regarding the scope of RABs be included in the rule to clarify that RABs may address only issues associated with environmental restoration activities under the DERP. The Department has modified the rule for clarification.

The Department received one comment requesting that the definition of ``environmental restoration'' be modified to include addressing detection and disposal of unexploded ordnance and demolition and removal of unsafe buildings and structures. These activities are currently included by definition as part of environmental restoration.

The Department received three additional comments regarding definitions. One commenter requested that the definition of ``stakeholder'' be revised to include current landowners of FUDS properties. The Department has incorporated this comment into the Rule. DoD also received two comments requesting that munitions and explosives of concern (MEC) be added to the definition of environmental restoration. MEC are included in the Department's environmental restoration program, specifically, they are addressed through the MMRP. The Department has incorporated language regarding the MMRP into the final rule.

[[Page 27612]]

The Department received many comments in support of the purpose and scope of this rule. Two commenters agreed with the Department regarding its encouragement of open public participation. One commenter agreed with DoD's approach that the rule applies to all RABs, regardless of

when they were formed.

B. 202.2. Criteria for Establishment

The Department received several comments requesting that the number of petitioners required to establish a RAB be reduced from 50 to 25 or 30. The Department clarifies that 50 petitioners is not the only way to establish a RAB. The petition is one of four proposed mechanisms to initiate the establishment of the RAB. Specifically, as found in Sec. 202.2(a) of the final rule, ``a RAB should be established when there is sufficient and sustained community interest and any of the following criteria are met--the closure of an installation involves the transfer of property to the community; at least 50 local citizens petition for a RAB; Federal, state, tribal, or local government representatives request the formation of a RAB; or the installation determines the need for a RAB.'' If 25 citizens petition for a RAB in a rural or less populated area, it is reasonable to conclude that the installation would determine the need or that Federal, state, tribal, or local government representatives would request formation of a RAB.

Several commenters requested that the statement ``sufficient and sustained community interest'' be further clarified. For RABs to operate, it is necessary that there be a voluntary investment of public participation. This public willingness to be involved in a voluntary group and invest the time and energy is not found in all communities. The statement ``sufficient and sustained community interest'' indicates that there is enough willingness from the community to adequately maintain a RAB for a continued period of time. DoD recognizes that installations nationwide are unique and has avoided inflexible standards that do not meet the needs of this program. In Section 202.2 of this rule, rather than providing specific standards, the Department has outlined several tools for Installation Commanders to use in the evaluation of ``sufficient and sustained community interest'' including reviewing correspondence files and media coverage; consulting local community members and relevant government officials; and evaluating responses to communication efforts, such as notices placed in local newspapers, and, if applicable, announcements on the installation's website. Once a RAB has been established, a decline in sufficient and sustained community interest should be evident when the public has withdrawn from a role of active involvement, such as a lack of attendance at scheduled meetings.

The Department received two comments requesting modified language regarding the conversion of existing TRCs or groups that provide advice to RABs. These commenters requested that, where TRCs or similar advisory groups already exist, the TRC or similar advisory group should be incorporated or converted into a RAB, provided there is sufficient and sustained interest within the community. The Department agrees with this statement and Sec. 202.2(c) of the final rule reflects this position.

Several commenters requested that the Installation Commander reassess community interest annually rather than bi-annually. The Department would like to make clear that the reassessment of interest conducted by the Installation Commander is not the sole mechanism to prompt the establishment or reestablishment of a RAB. This assessment is part of a layering strategy to ensure that where a community has sufficient interest, a RAB will be established; therefore, the Department has decided against making this change. Additional mechanisms found in Sec. 202.2(a) that prompt RABs to be established

or reestablished include the closure of an installation that involves the transfer of property to the community; at least 50 local citizens petition the installation for creation of a RAB; Federal, state, tribal, or local government representatives request the formation of a RAB; or the installation determines the need for a RAB based on correspondence files, media coverage, consultation of community members and relevant government officials, and responses to communication efforts, such as notices placed in local newspapers.

Two commenters suggested that local, state, and Federal agencies be involved in the Installation Commanders' biennial reassessments of the community's interest in RAB formation. The Department understands that local, state, and Federal agencies are also considered part of an installation's community, and as such, would be part of the Installation Commander's reassessment of community interest.

C. 202.4. Composition of a RAB

The Department received a few comments requesting further clarification and description of potential conflict of interest rules for RAB membership. DoD encourages these commenters to review the referenced documentation, the Federal Acquisition Regulation (FAR), for more information. The description provided in the rule is based on the FAR, which is the primary regulation for use by all Federal Executive Agencies in their acquisition of supplies and services with appropriated funds. The FAR can be reviewed online at <http://www.arnet.gov/far/>

The Department received several comments requesting additional guidelines on the selection of RAB members. Conversely, several comments indicated that the guidelines provided on the selection of RAB members were too burdensome and descriptive. Recognizing that the process for selecting RAB members is sensitive in nature, DoD provided RABs with a process for selecting these members. The Department expects that specific procedures developed by the selection panel will be established by each RAB and included in its operating procedures.

The Department received several conflicting comments requesting that specific individuals be required as members of RABs and opposing comments requesting that those same individuals not be allowed membership. The Department would like to clarify that RABs are part of DoD's stakeholder involvement program, where all interested stakeholders are invited to participate, including individuals, health officials, tribal members, local governments, state officials, and Federal representatives. The Department does not have the authority to require officials, agencies, or individuals that are non-DoD personnel to publicly participate or require their membership in RABs.

Several commenters requested that the Department expand RAB membership opportunities to those individuals that do not live or work in the affected communities. This comment was not incorporated because membership is restricted to those individuals that live or work in the affected communities. RAB meetings are widely publicized and open to all for participation. Representatives of organizations and agencies who live and work outside the affected area are certainly encouraged to voice their opinions and actively participate at RAB meetings. Another commenter requested that the Department further define the term ``affected community.'' DoD encourages each RAB to define the term ``affected community'' as appropriate, and to include this term in its

operating procedures for selecting RAB members.

[[Page 27613]]

One commenter requested revised language to transfer the role of appointing community RAB members from the Installation Commanders to community RAB members. The Department did not modify the role of the Installation Commander in this process. If the process outlined in Sec. 202.4(a)(2)(i) of the final rule is followed, the community selects a panel of members and the Installation Commander accepts or rejects all.

One commenter recommended that the RAB member selection panel not announce the list of RAB nominees, but instead transmit the list of nominees to the Installation Commander for appointment. The Department has incorporated this comment as suggested.

One comment recommended the addition of specific criteria to be used by the Installation Commander in determining what ``fairly represents the local community.'' The Installation Commander should be able to find information on the representation of the community in each installation's community Relations Plan (CRP).

One commenter agreed that RABs should have only one representative from each government agency to prevent an inordinate representation by government and DoD officials.

D. 202.5. Creating a Mission Statement

One commenter indicated that the language regarding a RAB's mission statement in the preamble was inconsistent with the language provided in the proposed rule. The Department reviewed the rule and noted that the language is consistent.

E. 202.6. Selecting Co-Chairs

One commenter requested that the rule allow for the flexibility of multiple community co-chairs. The Department did not incorporate this language in the rule, but recognizes that RABs are unique. One commenter asserted that it is appropriate for the community co-chair to be selected by the community RAB members as required in Sec. 202.6(b).

F. 202.7. Developing Operating Procedures

One commenter stated that references to goals and objectives were inconsistent within the proposed rule. A few commenters stated that it is inappropriate for the installation co-chair to determine the goals and objectives of the RAB. The Department updated information on goals and objectives in the final rule. The rule states that, ``Clearly defined goals and objectives for the RAB, as determined by the co-chairs in consultation with the RAB,'' should be addressed. The preamble of the proposed rule provided further detail on the type of consultation that should take place, including that, ``the DoD installation co-chair will listen to, consider, and provide specific responses to the RAB members' comments before finalizing the goals and objectives.'' The language provided clearly indicates that the RAB as a whole participates in the development of goals and objectives.

One commenter requested that there not be a requirement to publish and submit public notice of RAB meetings. This rule reflects Congressional requirements regarding public notices (see Sec. 317, Pub.

L. 136-108, 117 Stat. 1393 (10 U.S.C. 2705(d)(2)); these notices may be purchased through ads in local newspapers.

One commenter requested further clarification regarding a RAB member's function to provide feedback to other community members and to keep the public informed about the proceedings of the RAB. Reaching out to the broader community is an important role of community members. Clarification of a RAB member's function could be provided in the RAB's operating procedures.

One commenter requested that RAB meetings be held off base due to increased security measures and the difficulty for some members to gain access to military installations. The Department considers additional language unnecessary because Section 202.9(a)(2) explicitly states that, ``Each RAB meeting shall be held * * * in a manner or place reasonably accessible.'' It is recommended that additional language regarding meeting locations be incorporated in the RAB's operating procedures. Another comment was received requesting child care and transportation for RAB meetings. Child care and transportation will not be provided for RAB meetings. The Department recognizes that this is a burden that RAB participants bear and appreciates their involvement despite these factors. It is important that participant involvement continue without DoD providing services that could be perceived as creating the potential for biased opinions regarding environmental restoration at DoD sites.

Another commenter stated that all actions performed by a RAB should be available for public comment to ensure an open process. The Administrative Record provides the public with an open process for reviewing the actions performed by a RAB. Also, RAB meetings are open to public participation.

One commenter recommended that public participants be afforded the opportunity to provide comments at RAB meetings. The Department has incorporated this recommendation in Sec. 202.9(a)(3) to read, ``Open solicitation of public comments shall be permitted, and members of the public will have a designated time on the agenda to speak to the RAB committee as a whole.''

One commenter stated that the preamble and proposed rule were inconsistent in their descriptions regarding the role of the RAB in developing operating procedures. DoD has incorporated language to state that each RAB develops its own operating procedures and that the co-chairs are responsible for carrying them out.

One commenter stated that copies of all materials presented at RAB meetings, including readable maps, should be available for RAB members and the public. The Department encourages the distribution of presentation materials to RAB meeting participants and requires that these materials be included in the information repository or administrative record as appropriate and when security concerns allow.

One commenter requested that a RAB be able to exercise its authority to change or reduce the frequency of the meeting schedule as needed through its operating procedures. The Department agrees with the commenter and would like to call attention to Section 202.7(a)(5) which indicates that the operating procedures will address meeting frequency and location.

One commenter requested a specific timeframe for the distribution of meeting agendas. Another commenter requested clarification that community members play a key role in the development of the meeting agenda. The Department recommends that if a RAB is facing difficulty distributing meeting agendas, specific recommendations for a timeframe to distribute meeting agendas be made in that RAB's operating

procedures. It is impractical and inflexible to set out a specific timeframe for RABs to distribute meeting agendas. The Department agrees that the community should play a key role in the development of the meeting agenda, and for this reason, this language was included as a discussion item in the RAB's operating procedures Sec. 202.7(a)(13).

Several commenters offered supportive statements on the provisions for developing operating procedures. One commenter felt that the operating procedures would work well for existing RABs. In addition, commenters felt that it is appropriate for a RAB to develop specific operating procedures tailored to the needs of that individual RAB.

[[Page 27614]]

G. 202.8. Training RAB Members

Several comments were received pertaining to training for RAB members. A few commenters suggested that training for RABs has been inadequate. The rule has been modified to incorporate comments received that suggest improved language relevant to training. One commenter stated that training that is ``unique to and mutually benefits'' RABs is not a workable standard. The text was revised to indicate that training would be site-specific and beneficial to RAB members. The Department also expanded this section to recommend training for RAB members that includes clarification of the purpose and responsibilities of RABs, familiarization with cleanup technologies, chemicals of concern, sampling protocols, and information about the availability of independent technical advice and document review through EPA's Technical Assistance Grant (TAG) program and DoD's Technical Assistance for Public Participation (TAPP) program.

H. 202.9. Conducting RAB Meetings

One commenter stated that copies of all materials presented at RAB meetings, including readable maps, should be available to RAB members and the public. The Department encourages the distribution of presentation materials and readable maps to all RAB meeting participants as appropriate. However, it may not be appropriate in all cases for maps to be distributed to the community due to increased security measures at many installations.

The Department received several comments regarding the RAB voting practices. DoD would like to make clear that voting or polling members is not a requisite action of RABs. Comments stated that DoD members of the RAB should not be allowed to vote and that only RAB community members should have voting privileges. The Department has modified the language in the rule to assert that each RAB member may provide advice as an individual; however, when a RAB decides to vote or poll for consensus, only community members should participate. The Department will not be obligated by votes or consider voting results to be more important than the advice of an individual RAB member.

One commenter requested clarification on whether publications listed on Web sites would meet the requirements of ``publishing meeting notices in a local newspaper of general circulation.'' The Department clarifies that publicizing meeting notices on Web sites would not meet the requirements of publishing notices in local newspapers. Posting meeting notices on Web sites is a good practice, but should be done in addition to local newspaper requirements.

The Department received a few comments regarding the procedures for

recording, approving, and distributing meeting minutes. One commenter requested that transcription services be provided to record RAB meeting minutes. Another commenter requested that the rule set out a specific timeframe for the preparation and distribution of meeting minutes. In recognition of the fact that this final rule was developed to maximize flexibility for RAB members and installations nationwide, the Department has modified the language in the operating procedures Section 202.7(a)(4), recommending that each RAB develop a procedure for recording, approving, and distributing meeting minutes. Specific regulations for recording, approving, and distributing meeting minutes for all RABs nationwide were not included in this rule.

I. 202.10. RAB Adjournment and Dissolution

The Department received many comments regarding RAB adjournment. Many commenters disagreed with the Installation Commander having the authority to adjourn a RAB. One commenter recommended that the entire RAB agree in writing before it would be adjourned. RAB members are provided multiple opportunities for input should adjournment be considered. The Department would like to clarify that, as stated in Sec. 202.10(a)(2)(i) of the final rule, the Installation Commander shall, ``Consult with EPA, state, tribes, RAB members, and the local community, as appropriate, regarding adjourning the RAB and consider all responses before making a final decision.'' The Installation Commander, as the responsible, accountable Department of Defense contact, will have the authority to adjourn a RAB. The requirement for consultation protects the RAB from unilateral decisions made by DoD personnel.

One commenter requested that ``with input from the community'' be added to the statement, ``an Installation Commander may adjourn.'' The Department agrees with this recommendation and has incorporated the language into Sec. 202.10(a)(1) of the final rule.

Several other comments were received stating that RABs should not be considered for adjournment when records of decision (RODs) are signed or all remedies are in place. A commenter recommended that it would be better to adjourn when all sites reach the status of operating properly and successfully. The Department recognizes a RAB may not adjourn when all RODs are signed or all remedies are in place. Meetings should not need to be held as often, but additional input from the community may be necessary or helpful. RABs may want to decide in their operating procedures when it is appropriate or necessary to hold RAB meetings after all RODs are signed or all remedies are in place. It is not expected or required that a RAB adjourn at this time. The Department's experience has shown that after RODs are signed, communities may lose interest in the RAB. The Department provided a list of various circumstances that may lead an Installation Commander, in consultation with EPA, state, tribes, RAB members, and the local community, to adjourn a RAB.

Several commenters requested that RABs not be adjourned when the installation is transferred or cleanup privatized. The Department believes that it may be impractical for DoD to continue to operate RABs at former installations that have been transferred out of DoD control and restoration responsibilities assumed by the transferee. In such cases, after inviting input from the community and consulting with EPA (at NPL sites) and State officials, DoD will endeavor to arrange to have the transferee provide an appropriate means for the public to review and comment upon post-transfer restoration response decisions.

One commenter was concerned that decline in interest during long-term management (LTM) would lead to RAB adjournment, suggesting that the RAB may decide to meet less frequently instead of adjourning. Although lack of interest during LTM may be lead to RAB adjournment, it would not be required, and a change in meeting frequency may be sufficient. The Department recommends that RABs describe in their operating procedures when it is appropriate or necessary to hold RAB meetings during LTM. Stakeholders are also encouraged to utilize their installation's point of contact (POC) for environmental restoration activities and the installation's Community Relations Plan (CRP) to remain involved, regardless of the status of a RAB. Information regarding environmental restoration activities will be shared with the public, (e.g., local media, public meetings, and Web sites) and the POC and CRP may assist interested stakeholders in accessing this information. If the RAB is adjourned

[[Page 27615]]

and the community becomes interested again, the RAB can be reestablished.

A few comments were received stating that the process of adjournment and dissolution should be consistent. These processes were not made consistent, because they are employed in different situations, requiring different responses.

The Department received many comments on RAB dissolution. Most of these commenters disagreed with the Installation Commander's role in the dissolution process. The commenters requested that a RAB only be dissolved through a collective decision-making process. The Department would like to clarify that the Installation Commander does not dissolve a RAB. The decision to dissolve a RAB is raised to the Military Component's Deputy Assistant Secretary for Environment or Environment, Safety and Occupational Health. The Installation Commander's role in dissolution includes multiple consultation and notification requirements with EPA, state, tribes, RAB members, and the local community, as appropriate, before providing a recommendation to the Military Component's Deputy Assistant Secretary for Environment or Environment, Safety and Occupational Health. One commenter requested that the notification process require a fact sheet and public meeting. These actions may be taken, but are not specific requirements. Another commenter stated that the Installation Commander should provide ``responses to EPA and the state.'' The Installation Commander is required on multiple occasions to consult with EPA and the state, as appropriate.

One commenter requested that after a RAB is adjourned or dissolved, Installation Commanders should continue to reassess community interest in RAB formation not only when environmental restoration activities are ongoing, but also when these activities may start up again. This comment is incorporated in the rule Sec. 202.10(c).

One commenter stated that the process for reestablishing a previously adjourned or dissolved RAB is too time-intensive for communities that identify immediate health or environmental concerns. The Department would like to clarify that RABs are only one component of an installation's community outreach program. CERCLA (42 U.S.C. 9601, et seq.) and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300) require additional community involvement activities; therefore, an installation's RAB would not be a community's only method of addressing immediate health or environmental

concerns. If an installation identifies immediate health or environmental concerns, the installation should engage appropriate stakeholders by notifying them and holding public meetings.

J. 202.12. Administrative Support and Eligible Expenses

The Department received several comments regarding the funding of RABs. A few commenters opposed language stating that RABs are ``subject to the availability of funds.'' Another commenter stated that the Department should be required to report in local papers eligible expenses that are requested for RAB formation and operation that are not provided. One commenter requested that the Department clarify who pays for a RAB's administrative cost. Another commenter requested that the Department add informational materials relating to cleanup to the eligible administrative expenses. Regarding the comments that RABs should not be ``subject to the availability of funds,'' it should be clarified that the Department is authorized funding from Congress. DoD relies on this funding to support all programs; therefore, RABs remain ``subject to the availability of funds.'' The Department does not require RABs to report in local papers eligible expenses that are provided for the operation and formation of RABs. This type of discussion is more appropriately conducted at RAB meetings. To clarify the responsibility for a RAB's administrative costs, the Department refers this commenter to Sec. 202.12(a) which states that the ``installation shall provide administrative support to establish and operate a RAB.'' The Department directs the next commenter to Sec. 202.12(b)(7) which states that eligible administrative expenses include, ``preparation of meeting agenda materials,'' which addresses the request for eligible expenses, to include creating information materials for RAB members as it relates to the cleanup.

K. 202.13. Technical Assistance for Public Participation

One commenter stated that there was insufficient text regarding TAPP and suggested that section 202.13 be moved forward in the rule. The Department published a rule on TAPP that is located in 32 CFR Part 203; DoD did not expand section 202.13 or reorganize the RAB rule. Another commenter recommended that the reference to ``in-house assistance to discuss technical issues'' be removed from the TAPP section and placed in the training section. The Department agrees and removed this language from the TAPP section. A final comment regarding the TAPP section suggested that its language was misleading and vague, because it was not identical to EPA's Technical Assistance Grant program. The Department's TAPP program is intended to be a different program; they are not identical.

L. 202.14. Documenting and Reporting Activities and Expenses

The Department received two comments requesting a change in language where it is stated that the information repository be available at a ``single, publicly accessible location.'' The basis for this comment was that many installations may be located in more than one town, city, or county. The Department agrees that the language in the proposed rule was limiting and has removed the reference to a ``single'' location in the final rule.

A few commenters requested that copies of each RAB's activities and administrative expenses be provided to the RAB directly or be

maintained in the information repository. RAB minutes should be maintained in the information repository. The Military Components are required to track and report this information to fulfill statutory annual reporting requirements established in 10 U.S.C. 2706(a)(2)(j). This Annual Report to Congress is made publicly available. Individuals seeking installation-specific data should request this information from the installation co-chair. If the installation co-chair is not responsive, the request can be referred to the Installation Commander.

M. Web sites

Several commenters stated that the final rule should include language encouraging the use of Web sites as a communication tool for RABs. The Department agrees that Web sites are a valid and useful communication tool. Throughout the rule, DoD included language to reflect our encouragement and acceptance of this method of communicating. One commenter stated that each RAB should be required to set up and maintain a Web site. Although the Department encourages the use of Web sites in RAB communications, the Department declined to require that each RAB set up and maintain a Web site.

N. Role of an Installation Co-chair

The Department received several comments regarding the role of installation co-chairs in RABs. One commenter suggested that the concept of co-chairs was impractical and that the ``installation co-chair'' be replaced with

[[Page 27616]]

an ``installation representative.'' One commenter stated that the installation co-chairs had too much control in the formation and operation of RABs. Another commenter felt that it was inappropriate for the delegation of the installation co-chair role to go down the chain of command to civilian staff. Another commenter requested clarification on whether contractors could act on behalf of the installation co-chair. The concept of co-chairs is not considered impractical based on RABs functioning appropriately with community and installation co-chairs for the last 10 years. Although some have stated that the role of an installation co-chair unfairly exceeds that of a community co-chair, great lengths have been taken not only to ensure fairness, but also to clarify the important balance between the installation and community co-chair. Government officials are responsible and must be the ones to make cleanup decisions for action on government lands.

O. Consistency

The Department received several comments requesting that language provided in the preamble be consistent with language in the rule. The Department has reviewed and updated the final rule as appropriate.

P. Consideration of Comments

The Department received several comments regarding a RAB's process for considering comments. One commenter requested additional language to discuss ``careful consideration.'' Another commenter recommended that language be added for comments to be considered as a consensus, as

well as from individual RAB members. One commenter stated the installation be required to respond to all comments. This rule does not preclude any of the suggested comments. Recognizing that RABs are unique to each installation, the Department advises that RABs develop a process for considering comments in their operating procedures. See Sec. 202.7(a)(10). Although collective comments can be considered, the Department will not be obligated by the consensus. Comments will also be considered on an individual basis to ensure that every commenter is recognized.

Q. Comment Period

One commenter requested that the comment period be extended in the Federal Register to ensure that all RABs were notified when the Register opened. Although the Department did not extend the comment period on the proposed rule, the rule was sent to all RABs prior to being published as a proposed rule. For informational purposes, DoD mailed the draft proposed rule to over 700 RAB co-chairs. Additionally, these 700 RAB co-chairs were provided copies of the proposed rule when it was published in the Federal Register.

R. Accountability

The Department received many comments requesting that there be a mechanism to ensure the accountability of DoD actions on a RAB, specifically those actions of the installation co-chair. Several commenters stated that they were unaware of any oversight to ensure that the installation co-chairs were ``making a reasonable effort to ensure that a RAB performs its role as effectively as possible.'' Other commenters requested a method of redress should the RAB not be conducted in accordance with the rule. The Department has worked hard to ensure that chairmanship of the RAB is shared by the installation and community. The Department provides oversight for the RAB program, through the chain of command, to each Component's headquarters and to the Deputy Assistant Secretary. If DoD personnel take inappropriate actions, these actions would be addressed through the chain of command.

V. Administrative Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order 12866 (58 FR 51735; October 4, 1993) requires each agency taking regulatory action to determine whether that action is ``significant.'' The agency must submit any regulatory actions that qualify as ``significant'' to the Office of Management and Budget (OMB) for review, assess the costs and benefits anticipated as a result of the proposed action, and otherwise ensure that the action meets the requirements of the Executive Order. The Order defines ``significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely effect in a material way the economy, a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4)

raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Department has determined that the rule is not ``significant'' under Executive Order 12866 because it is not likely to result in a rule that will meet any of the four prerequisites.

(1) The rule will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities.

(2) The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) The rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) The rule will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires that an agency conduct a regulatory flexibility analysis when publishing a notice of rulemaking for any proposed or final rule. The regulatory flexibility analysis determines the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Department hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. The primary effect of the RAB rule will be to increase community involvement in DoD's environmental restoration program.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Section 202 of the UMRA requires that, prior to promulgating proposed and

[[Page 27617]]

final rules with ``Federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate or by the private sector, of \$100 million or more in any one year, the agency must prepare a written statement, including a cost-benefit analysis of the rule. Under Section 205 of the UMRA, DoD must also identify and consider a reasonable number of regulatory alternatives to the rule and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

Certain exceptions to Section 205 exist. For example, when the requirements of Section 205 are inconsistent with applicable law,

Section 205 does not apply. In addition, an agency may adopt an alternative other than the least costly, most cost-effective, or least burdensome in those cases where the agency publishes the final rule with an explanation of why such an alternative was not adopted. Section 203 of the UMRA requires that the agency develop a small government agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The small government agency plan must include procedures for notifying potentially affected small governments, providing officials of affected small governments with the opportunity for meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Department has determined that the rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments in the aggregate, or by the private sector in any one year. The term ``Federal mandate'' means any provision in statute or regulation or any Federal court ruling that imposes ``an enforceable duty'' upon state, local, or tribal governments, and includes any condition of Federal assistance or a duty arising from participation in a voluntary Federal program that imposes such a duty. The rule does not contain a Federal mandate because it imposes no enforceable duty upon state, tribal, or local governments.

D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. The term ``collection of information'' includes collection of information from ten or more persons. The Department has determined that the PRA does not apply to this rule because, although the Department will collect information on RABs, it does not mandate that any person supply information. Therefore, the PRA does not apply to the rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note), directs Federal agencies to use technical standards developed by voluntary consensus standards bodies in its regulatory activities, except in those cases in which using such standards would be inconsistent with applicable law or otherwise impractical. ``Technical standards'' means performance-based or design-specific technical specifications and related management systems practices. Voluntary consensus means that the technical standards are developed or adopted by voluntary consensus standards organizations. In those cases in which a Federal agency does not use voluntary consensus standards that are available and applicable, the agency must provide OMB with an explanation.

The rule does not involve performance-based or design-specific technical specifications or related management systems practices. The rule is therefore in compliance with the NTTAA.

F. Environmental Justice Requirements Under Executive Order 12898

Under Executive Order 12898, ``Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' a Federal agency must, where practicable and appropriate, collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies must then use this information to determine whether their activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

At this time, the Department believes that no action will directly result from the rule that will have a disproportionately high and adverse human health and environmental effect on any segment of the population.

G. Federalism Considerations Under Executive Order 13132

Executive Order 13132, entitled ``Federalism'' (64 FR 43255; August 10, 1999), establishes certain requirements for Federal agencies issuing regulations, legislative comments, proposed legislation, or other policy statements or actions that have ``Federal implications.'' Under the Executive Order, any of these agency documents or actions have ``Federal implications'' when they have ``substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Section 6 of the Executive Order prohibits any agency from issuing a regulation that has Federal implications, imposes substantial direct compliance costs on state and local governments, and is not required by statute. Such a regulation may be issued only if the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency consults with state and local officials early in the process of developing the proposed regulation. Further, a Federal agency may issue a regulation that has federalism implications and preempts state law only if the agency consults with state and local officials early in the process of developing the proposed regulation.

The rule does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The statute authorizing the Department's environmental restoration program, 10 U.S.C. 2701, clearly defines the rule and responsibilities of the Department with respect to state and local governments.

List of Subjects in 32 CFR Part 202

Administrative practice and procedure, Environmental protection--restoration, Federal buildings and facilities, Organization and functions (government agencies).

is

[[Page 27618]]

amended by adding part 202 to read as follows:

PART 202--RESTORATION ADVISORY BOARDS

Subpart A--General Requirements

Sec.

202.1 Purpose, scope, definitions, and applicability.

202.2 Criteria for establishment.

202.3 Notification of formation of a restoration advisory board.

202.4 Composition of a RAB.

Subpart B--Operating Requirements

202.5 Creating a mission statement.

202.6 Selecting co-chairs.

202.7 Developing operating procedures.

202.8 Training RAB members.

202.9 Conducting RAB meetings.

202.10 RAB adjournment and dissolution.

202.11 Documenting RAB activities.

Subpart C--Administrative Support, Funding, and Reporting Requirements

202.12 Administrative support and eligible expenses.

202.13 Technical assistance for public participation.

202.14 Documenting and reporting activities and expenses.

Authority: 5 U.S.C. 551 et seq and 10 U.S.C. 2705

Subpart A--General Requirements

Sec. 202.1 Purpose, scope, definitions, and applicability.

(a) Purpose. The purpose of this part to establish regulations regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of Restoration Advisory Boards (RABs).

(b) Purpose and scope of responsibilities of RABs. The purpose of a RAB is to provide:

(1) An opportunity for stakeholder involvement in the environmental restoration process at Department of Defense (DoD) installations. Stakeholders are those parties that may be affected by environmental restoration activities at the installation.

(2) A forum for the early discussion and continued exchange of environmental restoration program information between DoD installations, regulatory agencies, tribes, and the community.

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

(4) A forum for addressing issues associated with environmental restoration activities under the Defense Environmental Restoration Program (DERP) at DoD installations, including activities conducted under the Military Munitions Response program (MMRP) to address unexploded ordnance, discarded military munitions, and the chemical

constituents of munitions. Environmental groups or advisory boards that address issues other than environmental restoration activities are not governed by this regulation.

(c) Definitions. In this section:

(1) Community RAB member shall mean those individuals identified by community members and appointed by the Installation Commander to participate in a RAB who live and/or work in the affected community or are affected by the installation's environmental restoration program.

(2) Environmental restoration shall include the identification, investigation, research and development, and cleanup of contamination from hazardous substances, including munitions and explosives of concern, and pollutants and contaminants.

(3) Installation shall include active and closing DoD installations and formerly used defense sites (FUDS).

(4) Installation Commander shall include the Commanding Officer or the equivalent of a Commanding Officer at active installations; the Installation Commander or other Military Department officials who close the facility and are responsible for its disposal at Base Realignment and Closure (BRAC) installations; or the U.S. Army Corps of Engineers Project Management District Commander at FUDS.

(5) Public participants shall include anyone else who may want to attend the RAB meetings, including those individuals that may not live and/or work in the affected community or may not be affected by the installation's environmental restoration program but would like to attend and provide comments to the RAB.

(6) Stakeholders are those parties that may be affected by environmental restoration activities at an installation, including family members of military personnel and civilian workers, local and state governments and EPA for NPL properties, tribal community members and indigenous people, and current landowners, as appropriate.

(7) Tribes shall mean any Federally-recognized American Indian and Alaska Native governments as defined by the most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in the Federal Register pursuant to Section 104 of the Federally Recognized Tribe Act.

(8) RAB adjournment shall mean when an Installation Commander, in consultation with the Environmental Protection Agency (EPA), state, tribes, RAB members, and the local community, as appropriate, close the RAB based on a determination that there is no longer a need for a RAB or when community interest in the RAB declines.

(9) RAB dissolution shall mean when an Installation Commander, with the appropriate Military Component's Environmental Deputy Assistant Secretary's approval, disbands a RAB that is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects. Installation Commanders are expected to make every reasonable effort to ensure that a RAB performs its role as effectively as possible and a concerted attempt is made to resolve issues that affect the RAB's effectiveness. There are circumstances, however, that may prevent a RAB from operating effectively or fulfilling its intended purpose.

(d) Other public involvement activities. A RAB should complement other community involvement efforts occurring at an installation; however, it does not replace other types of community outreach and participation activities required by applicable laws and regulations.

(e) Applicability of regulations to existing RABs. The regulations in this part apply to all RABs regardless of when the RAB was

established.

(f) Guidance. The Office of the Deputy Under Secretary of Defense for Environment shall issue guidance regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs pursuant to this rule. The issuance of any such guidance shall not be a precondition to the establishment of RABs of the implementation of this part.

Sec. 202.2 Criteria for establishment.

(a) Determining if sufficient interest warrants establishing a RAB. A RAB should be established when there is sufficient and sustained community interest, and any of the following criteria are met:

(1) The closure of an installation involves the transfer of property to the community,

(2) At least 50 local citizens petition the installation for creation of a RAB.

(3) Federal, state, tribal, or local government representatives request the formation of a RAB, or

[[Page 27619]]

(4) The installation determines the need for a RAB. To determine the need for establishing a RAB, an installation should:

(i) Review correspondence files,

(ii) Review media coverage,

(iii) Consult local community members,

(iv) Consult relevant government officials, and

(v) Evaluate responses to communication efforts, such as notices placed in local newspapers and, if applicable, announced on the installations Web site.

(b) Responsibility for forming or operating a RAB. The installation shall have lead responsibility for forming and operating a RAB.

(c) Converting existing Technical Review Committees (TRCs) to RABs. In accordance with 10 U.S.C. 2705(d)(1), a RAB may fulfill the requirements of 10 U.S.C. 2705(c), which directs DoD to establish TRCs. DoD recommends that, where TRCs or similar advisory groups already exist, the TRC or similar advisory group be considered for conversion to a RAB, provided there is sufficient and sustained interest within the community.

Sec. 202.3 Notification of formation of a Restoration Advisory Board.

Prior to establishing a RAB, an installation shall notify potential stakeholders of its intent to form a RAB. In announcing the formation of a RAB, the installation should describe the purpose of a RAB and discuss opportunities for membership.

Sec. 202.4 Composition of a RAB.

(a) Membership. At a minimum, each RAB shall include representatives from DoD and the community. RAB community membership shall be well balanced and reflect the diverse interests within the local community.

(1) Government representation. The RAB may also include representatives from the EPA at the discretion of the Regional Administrator of the appropriate EPA Regional Office, and state, tribal, and local governments, as appropriate. At closing installations where BRAC Cleanup Teams (BCT) exist, representatives of the BCT may also serve as the government representative(s) of the RAB. The Department encourages individuals and agencies involved with BRAC to participate in RABs at closing installations.

(2) Community representation. Community RAB members should live and/or work in the affected community or be affected by the installation's environmental restoration program. While DoD encourages individual tribal members to participate on RABs, RABs in no way replace or serve as a substitute forum for the government-to-government relationship between DoD and Federally-recognized tribes.

(i) To support the objective selection of community RAB members, installations will use a selection panel comprised of community members to nominate community RAB members. The Installation Commander, in consultation with the state, tribal, and local governments and EPA, as appropriate, will identify community interests and solicit names of individuals who can represent these interests on the selection panel. The panel will establish the procedures for nominating community RAB members, the process for reviewing community interest, and criteria for selecting community RAB members. The panel will transmit the list of RAB nominees to the Installation Commander for appointment.

(ii) Following the panel nominations, the Installation Commander, in consultation with the state and EPA, as appropriate, will review the nominations to ensure the panel fairly represents the local community. The Installation Commander will accept or reject the entire list of RAB nominees for appointment.

(b) Chairmanship. Each RAB established shall have two co-chairs, one representing the DoD installation and the other the community. Co-chairs shall be responsible for directing and managing the RAB operations.

(c) Compensation for community members of the RAB. The community co-chair and community RAB members serve voluntarily. DoD will not compensate them for their participation.

Subpart B--Operating Requirements

Sec. 202.5 Creating a mission statement.

The installation and community co-chair, in conjunction with the RAB members, shall determine the RAB mission statement in accordance with guidance provided by the DoD Components.

Sec. 202.6 Selecting co-chairs.

(a) DoD installation co-chair. The DoD installation co-chair shall be selected by the Installation Commander or equivalent, or in accordance with Military Component-specific guidance.

b. Community co-chair. The community co-chair shall be selected by the community RAB members.

Sec. 202.7 Developing operating procedures.

Each RAB shall develop a set of operating procedures and the co-chairs are responsible for carrying them out. Areas that should be addressed in the procedures include:

- (a) Clearly defined goals and objectives for the RAB, as determined by the co-chairs in consultation with the RAB,
- (b) Meeting announcements,
- (c) Attendance requirements of members at meetings,
- (d) Development, approval and distribution procedures for the minutes of RAB meetings,
- (e) Meeting frequency and location,
- (f) Rules of order,
- (g) The frequency and procedures for conducting training,
- (h) Procedures for selecting or replacing co-chairs and selecting, replacing, or adding RAB members,
- (i) Specifics on the size of the RAB, periods of membership, and co-chair length of service,
- (j) Review of public comments and responses,
- (k) Participation of the general public,
- (l) Keeping the public informed about proceedings of the RAB,
- (m) Discussing the agenda for the next meeting and issues to be addressed, and
- (n) Methods for resolving disputes.

Sec. 202.8 Training RAB members.

Training is not required for RAB members. It may be advisable, however, to provide RAB members with some initial orientation training regarding the purpose and responsibilities of the RAB, familiarization on cleanup technologies, chemicals of concern, and sampling protocols, as well as informing them of the availability of independent technical advice and document review through EPA's Technical Assistant Grant program and DoD's Technical Assistance for Public Participation (TAPP) program, to enable them to fulfill their responsibilities. Training should be site-specific and beneficial to RAB members. The DoD installation may also provide in-house assistance to discuss technical issues. Funding for training activities must be within the scope of administrative support for RABs, as permitted in Sec. 202.12.

Sec. 202.9 Conducting RAB meetings.

- (a) Public participation. RAB meetings will be open to the public.
 - (1) The installation co-chair shall prepare and publish a timely public notice in a local newspaper of general circulation announcing each RAB meeting. If applicable, it is recommended that the meeting also be announced on the installation's Web site.
 - (2) Each RAB meeting shall be held at a reasonable time and in a manner or

[[Page 27620]]

place reasonably accessible to and usable by all participants, including persons with disabilities.

- (3) Presentation materials and readable maps should be provided to all meeting participants as appropriate.

(4) Interested persons shall be permitted to attend, appear before, or file statements with any RAB, subject to such reasonable rules or regulations as may be prescribed. Open solicitation of public comments shall be permitted and members of the public will have a designated time on the agenda to speak to the RAB committee as a whole.

(b) Nature of discussions. The installation shall give careful consideration to all comments provided by individual RAB members. Group consensus is not a prerequisite for RAB input. Each member of the RAB may provide advice as an individual; however, when a RAB decides to vote or poll for consensus, only community members should participate.

(c) Meeting minutes. The installation co-chair, in coordination with the community co-chair, shall prepare the minutes of each RAB meeting.

(1) The RAB meeting minutes shall contain a record of the persons present; a complete and accurate description of matters discussed and comments received; and copies of all reports received, issued, or approved by the RAB. The accuracy of all minutes shall be certified by the RAB co-chairs. RAB minutes should be kept in the information repository; however, if the RAB minutes reflect decision-making, copies should also be documented in the Administrative Record.

(2) The records, reports, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each RAB shall be available for public inspection and copying at a publicly accessible location, such as the information repositories established under the installation's Community Relations Plan, a public library, or in the offices of the installation to which the RAB reports, until the RAB ceases to exist.

Sec. 202.10 RAB adjournment and dissolution.

(a) RAB adjournment.--(1) Requirements for RAB adjournment. An Installation Commander may adjourn a RAB with input from the community when there is no longer a need for a RAB or when community interest in the RAB no longer exists. An Installation Commander may consider adjourning the RAB in the following situations:

(i) A record of decision has been signed for all DERP sites on the installation,

(ii) An installation has achieved response complete at all sites and no further environmental restoration decisions are required,

(iii) An installation has all remedies in place,

(iv) The RAB has achieved the desired end goal as defined in the RAB Operating Procedures,

(v) There is no longer sufficient, sustained community interest, as documented by the installation with RAB community members and community-at-large input, to sustain the RAB. The installation shall continue to monitor for any changes in community interest that could warrant reactivating or reestablishing the RAB, or

(vi) The installation has been transferred out of DoD control and day-to-day responsibility for making restoration response decisions has been assumed by the transferee.

(2) Adjournment procedures. If the Installation Commander is considering adjourning the RAB, the Installation Commander shall:

(i) Consult with EPA, state, tribes, RAB members, and the local community, as appropriate, regarding adjourning the RAB and consider all responses before making a final decision.

(ii) Document the rationale for adjournment in a memorandum in a

memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation, and describe other ongoing public involvement opportunities that are available if the Installation Commander decides to adjourn the RAB.

(b) RAB dissolution.--(1) Requirements for RAB dissolution. An Installation Commander may recommend dissolution of a RAB when a RAB is no longer fulfilling the intended purpose of advising and providing community input to an Installation Commander and decision makers on environmental restoration projects as described in Sec. 202.1(b).

(2) Dissolution procedures. If the Installation Commander is considering dissolving the RAB, the Installation Commander shall:

(i) Consult with EPA, state, tribal and local government representatives, as appropriate, regarding dissolving the RAB.

(ii) Notify the RAB community co-chair and members in writing of the intent to dissolve the RAB and the reasons for doing so and provide the RAB members 30 days to respond in writing. The Installation Commander shall consider RAB member responses, and in consultation with EPA, state, tribal and local government representatives, as appropriate, determine the appropriate actions.

(iii) Notify the public of the proposal to dissolve the RAB and provide a 30-day public comment period on the proposal, if the Installation Commander decides to proceed with dissolution. At the conclusion of the public comment period, the Installation Commander will review the public comments, consult with EPA, state, tribal and local government representatives, as appropriate, and, if the Installation Commander still believes dissolution is appropriate, render a recommendation to that effect.

(iv) Send the recommendation, responsiveness summary, and all supporting documentation via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Military Component's Environmental Deputy Assistant Secretary (or equivalent) shall notify the Office of the Deputy Under Secretary of Defense (Installations & Environment) (or equivalent) of the decision to approve or disapprove the request to dissolve the RAB and the rationale for that decision.

(v) Document the recommendation, responsiveness summary, and the rationale for dissolution in a memorandum for inclusion in the Administrative Record, notify the public of the decision through written notice to the RAB members and through publication of a notice in a local newspaper of general circulation and describe other ongoing public involvement opportunities that are available, once the Military Component's Environmental Deputy Assistant Secretary (or equivalent) makes a final decision.

(c) Reestablishing an adjourned or dissolved RAB. An Installation Commander may reestablish an adjourned or dissolved RAB if there is sufficient and sustained community interest in doing so, and there are environmental restoration activities still ongoing at the installation or that may start up again. Where a RAB is adjourned or dissolved and environmental restoration activities continue, the Installation Commander should reassess community interest at least every 24 months. When all environmental restoration decisions have been made and required remedies are in place and are properly operating

at an installation, reassessment of the community interest for reestablishing the RAB is not necessary. When additional environmental restoration decisions have to be made resulting from subsequent actions, such as long-term management and five-year reviews, the installation will reassess community interest for reestablishing the RAB. Where the reassessment finds sufficient and sustained community interest at previously adjourned or dissolved RABs, the Installation Commander should reestablish a RAB. Where the reassessment does not find sufficient and sustained community interest in reestablishing the RAB, the Installation Commander shall document in a memorandum for the record the procedures followed in the reassessment and the findings of the reassessment. This document shall be included in the Administrative Record for the installation. If there is interest in reestablishment at a previously dissolved RAB, but the Installation Commander determines that the same conditions exist that required the original dissolution, he or she will request, through the chain-of-command to the Military Component's Deputy Assistant Secretary, an exception to reestablishing the RAB. If those conditions no longer exist at a previously dissolved RAB, and there is sufficient and sustained interest in reestablishment, the Installation Commander should recommend to the Deputy Assistant Secretary that the RAB be reestablished. The Deputy Assistant Secretary will take the Installation Commander's recommendation under advisement and may approve that RAB for reestablishment.

(d) Public comment. If the Installation Commander intends to recommend dissolution of a RAB or reestablish a dissolved RAB, the Installation Commander shall notify the public of the proposal to dissolve or reestablish the RAB and provide a 30-day public comment period on the proposal. At the conclusion of the public comment period, the Installation Commander shall review public comments; consult with EPA and state, tribal, or local government representatives, as appropriate; prepare a responsiveness summary; and render a recommendation. The recommendation, responsiveness summary, and all supporting documentation should be sent via the chain-of-command to the Military Component's Environmental Deputy Assistant Secretary (or equivalent) for approval or disapproval. The Installation Commander shall notify the public of the decision.

Sec. 202.11 Documenting RAB activities.

(a) The installation shall document information on the activities of a RAB in the Information Repository. These activities shall include, but are not limited to:

(1) Installation's efforts to survey community interest in forming a RAB,

(2) Steps taken to establish a RAB where there is sufficient and sustained community interest,

(3) How the RAB related to the overall community involvement program, and

(4) Steps taken to adjourn, dissolve, or reestablish the RAB.

(b) When RAB input has been used in decision-making, it should be documented as part of the Administrative Record.

Subpart C--Administrative Support, Funding, and Reporting Requirements

Sec. 202.12 Administrative support and eligible expenses.

(a) Administrative support. Subject to the availability of funding, the installation shall provide administrative support to establish and operate a RAB.

(b) Eligible administrative expenses for a RAB. The following activities specifically and directly associated with establishing and operating a RAB shall qualify as an administrative expense of a RAB:

(1) RAB establishment.

(2) Membership selection.

(3) Training if it is:

(i) Site specific and benefits the establishment and operation of a RAB.

(ii) Relevant to the environmental restoration activities occurring at the installation.

(4) Meeting announcements.

(5) Meeting facilities.

(6) Meeting facilitators, including translators.

(7) Preparation of meeting agenda materials and minutes.

(8) RAB-member mailing list maintenance and RAB materials distribution.

(c) Funding. Subject to the availability of funds, administrative support to RABs may be funded as follows:

(1) At active installations, administrative expenses for a RAB shall be paid using funds from the Military Component's Environmental Restoration accounts.

(2) At BRAC installations, administrative expenses for a RAB shall be paid using BRAC funds.

(3) At FUDS, administrative expenses for a RAB shall be paid using funds from the Environmental Restoration account for the Formerly Used Defense Sites program.

Sec. 202.13 Technical assistance for public participation.

Community members of a RAB or TRC may request technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and environmental restoration activities conducted, or proposed to be conducted, at the installation in accordance with 10 U.S.C. 2705(e) and the TAPP regulations located in 32 CFR Part 203.

Sec. 202.14 Documenting and reporting activities and expenses.

The installation at which a RAB is established shall document the activities and meeting minutes and record the administrative expenses associated with the RAB in the information repository at a publicly accessible location. Installations shall use internal department and Military Component-specific reporting mechanisms to submit required information on RAB activities and expenditures.

Dated: May 1, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-4246 Filed 5-11-06; 8:45 am]

BILLING CODE 5001-06-M