Issued: July 13, 1995.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–17816 Filed 7–19–95; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

### 24 CFR PART 955

**[Docket No. FR–3614–N–02]**

**RIN 2577–AB40**

### Loan Guarantees for Indian Housing

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of extension of loan guarantees for Indian Housing Program.

**SUMMARY:** This notice extends, until the publication of a final rule, the period that the interim rule for the Loan Guarantees for Indian Housing Program will be in effect.

**EFFECTIVE DATE:** July 20, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dominic Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, room B–133, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–0032; (TDD) (202) 708–0850. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Section 955.125 of the Loan Guarantees for Indian Housing Program in 24 CFR was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The rule provides that the expiration period may be extended by notice published in the **Federal Register**. Because the expiration date for the Loan Guarantees for Indian Housing Program interim rule is currently July 31, 1995, and a final rule is not expected before that date, this notice extends the expiration date until the effective date of a final rule, which is anticipated in the near future.

Accordingly, the time period during which the interim rule for the Loan Guarantees for Indian Housing Program at 24 CFR part 955 will be in effect is extended until the effective date of a final rule for the Program.

Dated: July 13, 1995.

**Michael B. Janis,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 95–17811 Filed 7–19–95; 8:45 am]

BILLING CODE 4210–33–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Parts 90 and 91

**[RINs 0790–AF61 and 0790–AF62]**

### Revitalizing Base Closure Communities and Community Assistance

**AGENCY:** Office of the Assistant Secretary of Defense for Economic Security, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule amends DoD's Revitalizing Base Closure Communities and Community Assistance regulation, and promulgates guidance required by Title XXIX of the National Defense Authorization Act for Fiscal Year 1994, including those provisions required by Section 2903. This rule also establishes policy and procedures, assigns responsibilities, and delegates authority to implement the President's Program to Revitalize Base Closure Communities, July 2, 1993. This document does not include guidance on acquiring property for the cost of environmental cleanup (Section 2908) or on the substantial changes made in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. The changes stemming from this Act will be made in an accompanying rule, which will be open for public comment and which will be published by the Departments of Defense and Housing and Urban Development.

**EFFECTIVE DATE:** July 20, 1995.

**ADDRESSES:** Inquiries should be sent to the Office of the Assistant Secretary of Defense for Economic Security, Room 1D760, The Pentagon, Washington, DC 20301–3300; email: base__reuse@acq.osd.mil

**FOR FURTHER INFORMATION CONTACT:** Robert Hertzfeld, telephone (703) 695–1470; email: hertzfre@acq.osd.mil

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 6, 1994, the Office of the Secretary of Defense published an Interim Final Rule (59 FR 16123) that changed the process for disposing of real and personal property at closing and realigning military bases. Four outreach seminars (in Washington, DC, Chicago, Dallas, and San Francisco) and a public hearing (in Washington, D.C.) were held between April 28, 1994, and August 15, 1994, to explain the Interim Final Rule and foster public comments.

On October 26, 1994, the Office of the Secretary of Defense amended the Interim Final Rule (59 FR 53735). That amendment amended the previous guidance on ''jobs-centered property disposal'', clarified the procedures for applying for an economic development conveyance, and provided guidance for greater flexibility on the compensation to the federal government for real property conveyed under an economic development conveyance.

On October 25, 1994, the Congress enacted the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421). That Act exempts certain base closure property from the procedures contained in the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301) and creates a new process for the federal government and local communities affected by base closure to address the needs of the homeless. This publication does not provide guidance on the substantial changes made by Public Law 103–421, which will be addressed in a publication of the Departments of Defense and Housing and Urban Development.

#### Approach

This rule marks another step in the Department of Defense's effort to improve the base closure and reuse process. The rulemaking process was an open one, in which Department personnel sought advice from individuals and organizations involved in the reuse process at a public hearing, at outreach seminars, at conferences, and through written public comments.

In order to encourage the rapid disposal and reuse of base closure property, the Department has been working to improve its process towards one that:

- Is based, to the greatest extent possible, on a comprehensive, community-based planning process;
- Encourages formation of and reliance upon local reuse authorities;
- Is targeted towards community needs generated from the closure of the installation; and,
- Allows for common sense decisions by the implementors.

To achieve these goals, the Department developed regulations and policies around three key themes:

- *Consultation*. The Military Department and the Local Redevelopment Authority should be in

constant contact throughout the base closure and reuse process. Problems can be avoided through consultation.

• *Partnering.* The Military Departments and LRAs should work together honestly and with full disclosure. Their efforts should be coordinated to minimize duplicative efforts and avoid misunderstandings. Mutual goals can be achieved between parties that treat each other as partners, not adversaries.

• *Flexibility*. To maximize flexibility and allow for site-specific solutions, these regulations have been generally limited to those provisions required by law, as well as those that affect other federal agencies. Discretion has been left, where possible, for solutions that are most appropriate for a given installation.

These regulations reflect the Administration's effort to create a flexible process that works better and costs less. Regulations which are intended to cover all situations straight jacket federal employees and confuse the public. In order to maintain flexibility while providing guidance, the Office of the Secretary of Defense prepared a Base Reuse Implementation Manual for use by the Military Departments. The Manual, which provides greater detail about the issues addressed in this part, is available to Local Redevelopment Authorities and other interested parties. Copies will be available, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

**Overview of changes**

• What has changed in the section on the identification of interests (''screening'') in real property?

• The timetables for federal screening have been clarified and shortened.

• The review criteria have been clearly articulated.

• What has changed in the leasing procedures?

• The differences between interim and long-term leases have been clarified.

• The term of interim leases have been clarified. These leases can now last for up to five years, including options to renew.

• A termination-at will clause is no longer required.

• If property is leased for less than fair market value and the lease permits the property to be sublet, the rents from the subleases must be applied to the protection, maintenance, repair, improvement, and costs related to the property.

• What has changed in the handling of personal property?

• The regulation has been revised to require the Military Departments to:

• Provide a comprehensive inventory list to the Local Redevelopment Authority.

• Consult with the Local Redevelopment Authority before establishing the deadlines for removing equipment from the closing base.

• Prohibit the transfer of ordinary fixtures unless not required for redevelopment.

• Permit the transfer of other personal property required for Military Department use when the LRA objects, only if the transfer is approved by an Assistant Secretary of the Military Department.

• Consult with the redevelopment authority before offering it a suitable substitute for property being removed.

• Two procedures for transfers of personal property not related to real property have been created.

• What has changed regarding Economic Development Conveyances?

• Valuation terms have been clarified.

• The requirement for an excess profits clause has been removed.

• What has changed in the section on maintenance, utilities, and services?

• DoD clarified the procedures for determining the initial levels of maintenance to encourage quick reuse and specified the time periods for which the Military Departments will sustain the initial levels of maintenance. The time periods are now greater than the legal minimums, and the Secretaries of the Military Departments may extend them (under specific circumstances).

**Discussion of Public Comments and Changes**

In response to the April 6, 1994, publication of the Interim Final Rule in the **Federal Register,** DoD received comments from 126 separate sources, consisting of redevelopment authorities and local governments, State and regional governments, public and private organizations, federal departments and agencies, members of Congress, and individuals. Almost half of these comments were addressed when the Interim Final Rule was amended (59 FR 53735, October 26, 1994). This amendment removed § 91.7(d), ''Jobs-Centered Property Disposal,'' and revised §§ 91.7(e), ''economic development conveyance,'' and 91.7(f), ''Profit Sharing.''

The response to the remainder of the comments is divided into sections corresponding to the regulation.

**Identification of Interests in Real Property**

The public comments regarding real property screening spanned two sections of the Interim Final Rule: real property screening and McKinney Act screening.

• *Federal agency priority*. Several federal entities suggested that DoD Components and federal agencies have an un-questioned right to property.

*RESPONSE:* DoD specified time tables and requirements that federal agencies must follow to claim base closure property under the priority accorded to them by the Federal Property and Administrative Services Act of 1949. If the agencies meet these strict requirements within the given time tables, their request will be considered prior to others. However, DoD remains committed to promoting economic recovery and rapid job creation in the communities adversely affected by base closures, while still ensuring that federal resources are available for other important public uses. To carry out those dual responsibilities, DoD must maintain the flexibility to determine the highest and best use for the property.

• *Fair Market Value.* Other federal agencies suggested waiving the requirement for federal agencies to pay fair market value for the property.

*RESPONSE:* DoD will continue to follow current federal policies (41 CFR 101–47.203–7(f)(2)) that require federal agencies to pay fair market value to DoD for its property, unless specifically granted an exemption by the Office of Management and Budget.

• *Timetables.* Many comments suggested clarifying timetables for federal screening and for submitting applications for the property to the Military Departments.

*RESPONSE:* DoD revised the rule in response to these requests.

• *Native American interests.* Several comments requested clarification regarding Native American tribes' participation in the screening process.

*RESPONSE:* Native American interests can be addressed at two points in the screening process. First, Native American tribes can submit expressions of interest to the Bureau of Indian Affairs (BIA), which is held to the same tight timetables and criteria as other federal agencies. Interested Native American tribes should contact BIA for information about its policy for expressions of interest. Alternatively, tribal governments may participate in the local comprehensive planning process and express their interests to the LRA. Tribes adversely affected by the base closure should be part of the LRA and should work within this process to see that their needs are addressed through a single, comprehensive plan.

• *Local control over the planning process.* Comments from non-federal

sources criticized the Interim Final Rule for not giving redevelopment authorities sufficient control over redevelopment and disposal planning. Their comments focused on the timing for the screening of property with federal agencies and homeless assistance providers and the need for coordination between applicants for property and redevelopment authorities.

*RESPONSE:* As part of DoD's response to the public comments, the Department worked with other federal agencies to assist the Congress in enacting the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. This law (Pub. L. 103–421) significantly altered the screening process. The changes stemming from this legislation will be implemented in a publication by the Departments of Defense and Housing and Urban Development.

**Local Redevelopment Planning**

The public comments regarding the local redevelopment plan section of the Interim Final Rule were primarily editorial, reflecting concern that this section of the regulation was unclear.

*RESPONSE:* DoD responded to those comments by clarifying the process in the section on economic development conveyances. DoD also published the ''Community Guide to Base Reuse,'' an Office of Economic Adjustment booklet that contains an overview of the reuse planning process. To obtain a copy, contact the Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–2884; (703) 604–6131; email: base__reuse@acq.osd.mil.

**Leasing of Real Property**

The public comments concerning the Interim Final Rule on the leasing of real property focused primarily on five areas:

- *Clarify the term of interim leases.*

*RESPONSE:* The Department responded to these concerns by specifying that a lease may be for up to five years, including options to renew, when it is entered into prior to completion of final disposal decisions under the National Environmental Policy Act (NEPA) process. DoD also specified that the term of a lease entered into after completion of the final disposal decisions under the NEPA process (a lease in furtherance of conveyance) may be longer than five years. In addition, the Military Departments have historically included a termination-at-will clause in lease documents that would allow the Military Department to terminate the lease if the property was ever needed for military purposes. This practice is no longer required.

- *Reconcile differing leasing practices* among the Military Departments. Comments in this area expressed the concern that the differing practices led to inconsistent and unequal treatment. Examples of inconsistencies cited included the lack of standard procedures, differing termination provisions, and inconsistent policies on obtaining insurance for the property.

*RESPONSE:* The Department of Defense responded to these concerns by developing a uniform policy for the Military Departments to follow. Thus, the DoD Base Reuse Implementation Manual, intended primarily for Service implementors, includes a sample lease application package, and a sample review checklist. Model lease provisions, which will generally be used by the Military Departments, are also included in this manual. DoD believes that these improvements will foster a more consistent approach and quicker response to lease applicants.

- *Clarify the consideration required for interim leases.*

*RESPONSE:* In response to the comments about consideration, DoD reiterated in the rule that property could be leased for less than fair market value if the Secretary of the Military Department determines that a public interest is served as a result of the lease and the fair market value of the lease is either unobtainable or not compatible with the public benefit that would be served.

- *Clarify the policy on subleasing.*

*RESPONSE:* DoD revised the rule to specify that if the property is leased for less than fair market value and the lease permits the property to be sublet, the rents from the subleases must be applied to the protection, maintenance, repair, improvement, and costs related to the property.

- *Improve the leasing process,* shortening the time it takes to conclude a lease agreement. Comments in this area suggested that DoD should expedite its environmental review process, establish deadlines for the Military Departments to respond to leasing requests, and delegate authority to grant interim leases to relatively low levels of authority within the Departments.

*RESPONSE:* DoD is convinced that all of the improvements mentioned above will improve and accelerate the leasing process. Additionally, DoD will continue to seek other ways to improve the process. For example, DoD continues to review its environmental review procedures to hasten that process while ensuring compliance with all pertinent laws and regulations. Also, DoD has created a tri-Service team to identify additional opportunities for improvement of the leasing process. In the meantime, the Military Departments will be encouraged to delegate leasing authority to the level that can best respond to local needs and still ensure compliance with statutory and regulatory requirements.

**Personal Property**

The public comments concerning the personal property section of the Interim Final Rule concentrated on six areas. Procedures for trading emission reduction credits are not addressed in this rule. A discussion on this subject is contained in the DoD Base Reuse Implementation Manual.

- *Provide the LRA with a complete inventory.* From the comments, DoD recognized that providing the redevelopment authority with an incomplete inventory list left the impression that the Military Departments were trying to hide property from the community.

*RESPONSE:* To counter that impression and promote trust and confidence between the Military Departments and Local Redevelopment Authorities, DoD revised the rule to require the Military Departments to provide a complete inventory list to the redevelopment authority.

- *Deadlines.* DoD recognized from the comments that the strict deadlines for removing equipment could leave the communities with the impression that Military Departments would be insensitive to the special needs of the community.

*RESPONSE:* DoD revised the rule to require the Military Departments to consult with the redevelopment authority before establishing deadlines for removing equipment from the closing base.

- *Redistribution.* Comments in this area criticized DoD for giving the Military Departments and the federal government priority for the personal property over the Local Redevelopment Authority, especially for those items that were not uniquely military. These submissions contended that if the communities needed the personal property for redevelopment purposes, they should have priority for it, since the Department's base closures created the need for redevelopment.

On the other hand, others contended that the Military Departments' authority to redistribute property had been unduly restricted. They asked that the Military Departments be given top priority for non-military items needed at another installation.

*RESPONSE:* DoD has struck a balance between these concerns. Personal property, except ordinary fixtures, required by the Military Department for the operation of transferring unit, function, component, weapon, or weapon systems may be removed upon approval of the base commander or higher authority. Other personal property, except ordinary fixtures, required by the Military Department for the operation of a unit, function, component, weapon, or weapon systems at another installation will be subject to consultation with the community. Where the community disputes a transfer, the approval by an Assistant Secretary of the Military Department will be required.

- *Substitutions.* Several comments criticized the provision that allowed the Military Departments to provide the redevelopment authority with substitute equipment instead of the actual item requested. They were concerned that the communities would get stuck with older, inferior equipment.

*RESPONSE:* DoD revised the rule to require the Military Departments and Defense Agencies to consult with the Local Redevelopment Authority before offering it a suitable substitute.

- *Complaints.* Some comments objected to the dispute resolution process. They suggested that DoD should establish another mechanism for resolving disputes—ideally one outside the purview of the agency that made the initial decision.

*RESPONSE:* While DoD struck the appeal provision from the rule, it will continue to direct the Military Departments to use the chain-of-command to address complaints.

- *Conveyances of personal property not related to real property.* The remainder of the comments expressed concern over the apparent lack of guidance for conveying personal property that is not associated with a real property transfer to the redevelopment authority. In particular, they wanted to know if a community could obtain individual items of personal property directly from the closing base, and, if so, how.

*RESPONSE:* DoD revised the rule to identify two procedures for conveying personal property (exclusive of real property) from a closing base to a Local Redevelopment Authority.

**Maintenance, Utilities, and Services**

The public comments concerning the levels of maintenance and repair section of the Interim Final Rule concentrated primarily on how the Military Departments would determine initial levels of maintenance and repair and how long they would maintain those levels, and expressed a concern that the Military Departments would abandon the property if it was not disposed of before the period of initial maintenance and repair lapsed.

*RESPONSES:*

- *General response:* DoD concluded that most of the public comments were based on misperceptions. For example, some feared that the levels of maintenance would be inadequate to preserve the property and that the Military Departments would discontinue maintaining the property after a specific date. To counter these misperceptions, DoD clarified the procedures for determining the initial levels of maintenance. DoD also encouraged the Military Departments to consult with the Local Redevelopment Authorities in making decisions on the initial levels of maintenance.
- *Duration of initial levels of maintenance.* The revised rule also identifies the time periods for which the Military Departments will sustain the initial levels of maintenance and repair. Not only may the Secretaries of the Military Departments extend the periods (under specific circumstances), but the time periods are now greater than those periods required by law.
- *Abandonment.* DoD specified in the rule that after the period of the initial levels of maintenance and repair lapses, the degree of maintenance and repair would revert to not less than those levels consistent with federal government standards for excess and surplus property. However, the levels of maintenance and repair may be lower than the initial levels.
- *Historic preservation.* Some submissions expressed concern that the regulation does not specifically require the Military Departments to consult with state historic preservation officers or the Advisory Council on Historic Preservation before determining the initial levels of maintenance and repair. DoD recognizes that Defense and federal regulations implementing Section 106 of the National Historic Preservation Act already require the Military Departments to consult with historic preservation activities about preserving historic property at closing military bases and so chose not to complicate the process by addressing the issue in this rule.

**General Comments on April 6, 1994, Interim Final Rule**

The general comments offered advice on implementing the Interim Final Rule, rather than the content of the Interim Final Rule. In response to these general comments, the Office of the Secretary of Defense prepared a Department of Defense Base Reuse Implementation Manual to provide greater detail and offer examples of how this rule will be implemented.

**Response to public comments on Economic Development Conveyances**

The Department received comments on the October 26, 1994, amendment to the Interim Final Rule (59 FR 53735). Many comments were supportive of the changes made, but did suggest some technical revisions. Other comments included:

- *Standardize terms.*

*RESPONSE:* The term ''present fair market value'' has been used throughout to avoid confusion.

- *Specify how much land should be applied for, and when.*

*RESPONSE:* Since the submissions did not provide a powerful justification for limiting the flexibility of implementors, the Department decided not to accept this recommendation.

- *Require arbitration if an agreement on compensation cannot be reached.*

*RESPONSE:* The statute requires the Military Department, rather than an arbitrator, to decide what compensation will be. In addition, DoD does not believe such a provision is necessary because it is committed to working with communities to assist them with economic redevelopment.

- *Change the definition of rural.*

*RESPONSE:* The Department did not feel it necessary to change the definition, because any community that shows a need for a discount can receive one under the new process. The possibility to receive property at no cost exists at urban and rural sites, if the property is determined not to have a positive present fair market value and/or if a 100% discount is determined to be necessary for job creation.

**Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action. The final rule raises novel policy issues arising out of the President's priorities.

**Regulatory Flexibility Act**

It has been determined that this rule will not have a significant economic impact on substantial number of small entities. The primary effect of this rule will be to help base closure communities by reducing the burden of the government's property disposal process on them and to accelerate the economic recovery of the relatively small number of communities that will be affected by the closure or realignment of a military installation.

**Paperwork Reduction Act**

The rule is not subject to the Paperwork Reduction Act because it imposes no obligatory information requirements beyond internal Department of Defense use.

**List of Subjects in 32 CFR Parts 90 and 91**

Community development, Government employees, Military personnel, Surplus government property.

Accordingly, 32 CFR parts 90 and 91 are revised as follows:

## PART 90—REVITALIZING BASE CLOSURE COMMUNITIES

Sec.
90.1 Purpose.
90.2 Applicability.
90.3 Definitions.
90.4 Policy.
90.5 Responsibilites.

**Authority:** 10 U.S.C. 2687 note.

### § 90.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities under the President's Five-Part Plan, ''A Program to Revitalize Base Closure Communities,'' July 2, 1993,[1] to speed the economic recovery of communities where military bases are slated to close.

(b) Implements 107 Stat. 1909, National Defense Authorization Act for Fiscal Year 1994, Title XXIX and The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421).

(c) Authorizes the publication of DoD 4165.66–M, ''Base Reuse Implementation Manual,'' in accordance with DoD 5025.1–M, ''DoD Directive System Procedures,'' August 1994.

### § 90.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components'').

### § 90.3 Definitions.

(a) *Closure.* All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

(b) *Relaignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as ''closed'' for purposes of this part.

### § 90.4 Policy.

It is DoD policy to:

(a) Help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases—more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly insuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation.

(b) This part does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103–160, or Pub. L. 103–421.

### § 90.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition and Technology shall issue DoD Instructions as necessary, to further implement applicable public laws effecting base closure implementation, and shall monitor compliance with this part. All authorities of the Secretary of Defense in Public Law 103–421 (108 Stat. 4326 *et. seq.*); Public Law 103–160, Title XXIX (107 Stat. 1909 *et. seq.*); Public Law 101–510, Section 2905 (104 Stat. 1813 *et. seq.*); and Public Law 100–526, Section 204 (102 Stat. 2627 *et. seq.*), are hereby delegated to the Assistant Secretary of Defense for Economic Security and may be delegated further.

(b) The Heads of the DoD Components shall advise their personnel with responsibilities related to base closures of the policies set forth in this part.

## PART 91—REVITALIZING BASE CLOSURE COMMUNITIES—BASE CLOSURE COMMUNITY ASSISTANCE

Sec.
91.1 Purpose.
91.2 Applicability.
91.3 Definitions.
91.4 Policy.
91.5 Responsibilities.
91.6 Delegations of authority.
91.7 Procedures.

**Authority:** 10 U.S.C. 2687 note.

### § 91.1 Purpose.

This part prescribes procedures to implement ''Revitalizing Base Closure Communities'' (32 CFR part 90), the President's five-part community reinvestment program, and real and personal property disposal to assist the economic recovery of communities impacted by base closures and realignments. The expeditious disposal of real and personal property will help communities get started with reuse early and is therefore critical to timely economic recovery.

### § 91.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the United Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components'').

### § 91.3 Definitions.

(a) *Base Closure Law.* The provisions of Title II of the Defense Authorization Amendments and Base Closure Realignment Act (Pub. L. 100–526, 102 Stat. 2623, 10 U.S.C. 2687 note), or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. 2687 note).

(b) *Closure.* All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian, and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

(c) *Consultation.* Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement.

(d) *Date of approval.* The date on which the authority of Congress to disapprove Defense Base Closure and Realignment Commission recommendations for closures or realignments of installations expires

[1] Available from the Office of the Assistant Secretary of Defense, The Pentagon, Room 1D760, Washington, DC 20301–3300; email: ''base__reuse@acq.osd.mil''

under Title XXIX of 104 Stat. 1808, as amended.

(e) *Excess property.* Any property under the control of a Military Department that the Secretary concerned determines is not required for the needs of the Department of Defense.

(f) *Realignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as ''closed'' for this document.

(g) *Local Redevelopment Authority* (LRA). Any authority or instrumentality established by state or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

(h) *Rural.* An area outside a Metropolitan Statistical Area.

(i) *Surplus property.* Any excess property not required for the needs and the discharge of the responsibilities of federal agencies. Authority to make this determination, after screening with all federal agencies, rests with the Military Departments.

(j) *Communities in the Vicinity of the Installation.* The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

(k) *Installation.* A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers, and harbors projects, flood control, or other project not under the primary jurisdiction or control of the Department of Defense.

### § 91.4 Policy.

It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases—more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation. This regulation does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Public Law 103–160, or Public Law 103–421.

### § 91.5 Responsibilities.

(a) The Assistant Secretary of Defense for Economic Security, after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue such guidance and instructions through the publication of a manual or other such guidance as may be necessary to implement Laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

(b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security on revitalizing base closure communities.

### § 91.6 Delegations of authority.

(a) The authority provided by sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 and 484) for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; and, September 13, 1991.[2] Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

(b) Authorities delegated to the Assistant Secretary of Defense for Economic Security by § 90.5 of this chapter are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this part or other DoD directive, instruction, manual or regulation. These authorities may be delegated further.

### § 91.7 Procedures.

(a) Identification of interest in real property. (1) To speed the economy recovery of communities affected by closures and realignments, it is DoD policy to identify DoD and federal interests in real property at closing and realigning military bases as quickly as possible. The Military Department having responsibility for the closing or realigning base shall identify such interests. The Military Department will keep the Local Redevelopment Authority (LRA) informed of these interests. This section establishes a uniform process, with specified timelines, for identifying real property which is excess to the Military Department for use by other Departments of Defense (DoD) Components and other federal agencies, and for the disposal of surplus property for various purposes.

(2) Upon the President's submission of the recommendations for base closures and realignments to the Congress in accordance with the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510), the Military Department shall send out a notice of potential availability to the other DoD Components, and other federal agencies. The notice of potential availability is a public document and should be made available in a timely basis, upon request. Federal agencies are encouraged to review this list, and to evaluate whether they may have a requirement for the listed properties. The notice of potential availability should describe the property and buildings that may be available for transfer. Installations which wholly or in part are comprised of withdrawn and reserved public domain lands should implement paragraph (a)(12) of this section at the same time.

(3) Military Departments should consider LRA input in making determinations on the retention of property (size of cantonment area), if provided. Generally, determinations on the retention of property (or size of the cantonment area) should be completed prior to the date of approval of the closure or realignment.

(4) Within one week of the date of approval of the closure or realignment, the Military Department shall issue a formal notice of availability to other DoD Components and federal agencies covering closing and realigning installation buildings and property available for transfer to other DoD Components and federal agencies. Withdrawn public domain lands, which the Secretary of the Interior has determined are suitable for return to his jurisdiction, will not be included in the notice of availability.

(5) Within 30 days of date of the notice of availability, any DoD Component or federal agency is required to provide a written, firm expression of interest for buildings and property. An expression of interest must explain the

[2] Available from the Office of the Assistant Secretary of Defense (Economic Security), The Pentagon, Room 1D760, Washington, DC 20301–3300; e mail: base__ reuse@acq.osd.mil

intended use and the corresponding requirement for the buildings and property.

(6) Within 60 days of the date of the notice of availability, the DoD Component or federal agency expressing interest in buildings or property must submit an application for transfer of such property to the Military Department or federal agency.

(i) Within 90 days of the notice of availability, the FAA should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be governed by paragraph (a)(9) of this section. Instead, such requests will be governed by the requirements of 41 CFR 101–47.308–2, to determine the transfer of property necessary for control of the airspace being relinquished by the Military Department.

(7) The Military Department will keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact federal agencies which sponsor public benefit transfers for information and technical assistance. The Military Department will provide points of contact at the federal agencies to the LRA.

(8) Federal agencies and DoD Components are encouraged to discuss their plans and needs with the LRA, if an LRA exists. DoD Components and federal agencies are encouraged to notify the Military Department of the results of this non-binding consultation. The Military Departments, the Base Transition Coordinator, and the Office of Economic Adjustment Project Manager are available to help facilitate communication between the federal agencies, DoD Components, and the LRA.

(9) A request for property from a DoD Component or federal agency must contain the following information:

(i) A completed GSA Form 1334, Request for Transfer (for requests from other DoD Components a DD Form 1354 is required). This must be signed by the head of the Component of the Department or Agency requesting the property. If the authority to acquire property has been delegation, a copy of the delegation must accompany the form;

(ii) A statement from the head of the requesting Component or agency that the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action);

(iii) A statement that the requesting Component or agency has reviewed its real property holdings and cannot satisfy this requirement with existing property. This review must include all property under the requester's accountability, including permits to other federal agencies and outleases to other organizations;

(iv) A statement that the requested property would provide greater long-term economic benefits than acquisition of a new facility or other property for the program;

(v) A statement that the program for which the property is requested has long-term viability;

(vi) A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility;

(vii) A statement that the size of the property requested is consistent with the actual requirement;

(viii) A statement that fair market value reimbursement to the Military Department will be made within two years of the initial request for the property, unless this obligation is waived by the Office of Management and Budget and the Secretary of the Military Department or a public law specifically provides for a non-reimbursable transfer. However, requests from the Military Departments or DoD Components do not need an Office of Management and Budget waiver; and

(ix) A statement that the requesting DoD Component or federal agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Military Department.

(10) The Military Department will make it decision on a request from a federal agency, Military Department, or DoD Component based upon the following factors, from the Federal Property Management Regulations (41 CFR 101–47.201–2):

(i) The paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based;

(ii) The proposed federal use is consistent with the highest and best use of the property;

(iii) The requested transfer will not have an adverse impact on the transfer of any remaining portion of the base;

(iv) The proposed transfer will not establish a new program or substantially increase the level of an agency's existing programs;

(v) The application offers fair market value for the property, unless waived;

(vi) The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department; and

(vii) The proposed transfer is in the best interest of the Government.

(11) When there are more than one acceptable applications for the same building or property, the Military Department responsible for the installation should first consider the needs of the military to carry out its mission. The Military Department should then consider the proposal's economic development and job creation potential and the LRA's comments, as well as the other factors in the determination of highest and best use.

(12) Closing or realigning installations may contain ''public domain lands'' which have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for the Defense Department's use. Lands deemed suitable for return to the public domain are not real property governed by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472), and are not governed by the property management and disposal provisions of the Base Closure and Realignment Act of 1988 (Pub. L. 100–526) and Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510). Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another federal agency's use.

(i) The Military Department responsible for a closing or realigning installation will provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closing.

(ii) The BLM will review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure or realignment, the BLM will review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved within this time period. The BLM will notify the Military Departments as to the final agreed upon withdrawn and reserved public domain lands at installations.

(iii) Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM will initiate a screening of DOI agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

(iv) Military Departments will transmit a Notice of Intent to Relinquish (see 43 CFR part 2372) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM will complete the suitability determination screening process within 30 days of receipt of the Military Department's Notice of Intent to Relinquish. If a DoD Component is approved to reuse the public domain lands, the BLM will be notified and BLM will determine if the current authority for military use of these lands needs to be modified/amended.

(v) If BLM determines the land is suitable for return, they shall notify the Military Department that the intent of the Secretary of the Interior is to accept the relinquishment of the Military Department.

(vi) If BLM determines the land is not suitable, the land should be disposed of pursuant to base closure law.

(13) The Military Department should make its surplus determination within 100 days of the issuance of the notice of availability, and shall inform the LRA of the determination. If requested by the LRA, the Military Department may postpone the surplus determination for a period of no more than six months after the date of approval of the closure of realignment.

(i) In unusual circumstances, extensions beyond six months can be granted by the Assistant Secretary of Defense of Economic Security.

(ii) Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.

(14) Once the surplus determination has been made, the Military Department shall:

(i) Follow the procedures outlined in paragraph (b) of this section, if applicable.

(ii) Or, for installations approved for closure or realignment after October 25, 1994, and installations approved for closure or realignment prior to October 25, 1994, that have elected, prior to December 24, 1994, to come under the process outlined in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, follow the procedures outlined in paragraph (c) of this section.

(15) Following the surplus determination, but prior to the disposal of property, the Military Department may, at its discretion, withdraw the surplus determination and evaluate a federal agency's late request for excess property.

(i) Transfers under this paragraph shall be limited to special cases, as determined by the Secretary of the Military Department.

(ii) Requests shall be made to the Military Department, as specified under paragraphs (a)(8) and (a)(9) of this section, and the Military Department shall notify the LRA of such late request.

(iii) Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Military Department is reviewing a late request.

(b) Homeless screening for properties not covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. (1) This section outlines the procedure created for the identification of real property to fulfill the needs of the homeless by section 2905(b)(6) of Pub. L. 101–510, as amended by Public Law 103–160 (referred to as the Pryor Amendment). It applies to BRAC 88, 91 and 93 bases if the LRA did not elect to be subject to the alternate homeless assistance screening procedure contained in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(2) The Military Department shall sponsor a workshop or seminar in the communities which have closing or realigning bases, unless such a workshop or seminar has already been held. These workshops or seminars will be conducted prior to the **Federal Register** publication by HUD of available property to assist the homeless.

(i) Not later than the date upon which the determination of surplus is made, the Military Department shall complete any determinations or surveys necessary to determine whether any building is available to assist the homeless. The Military Department shall then submit the list of properties available to assist the homeless to HUD.

(ii) HUD shall make a determination of the suitability of each property to assist the homeless in accordance with the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11411, (the McKinney Act). Within 60 days from the date of receipt of the information from the Department of Defense, HUD shall publish a list of suitable properties that shall become available when the base closes or realigns.

(iii) The listing of properties in the **Federal Register** under this procedure shall contain the following statement. (The listing of 1988 base closure properties that will be reported to HUD shall refer to section 204(b)(6) of Public Law 100–526 instead of section 2905(b)(6) of Public Law 101–510):

> The properties contained in this listing are closing and realigning military installations. This report is being accomplished pursuant to section 2905(b)(6) of Public Law 101–510, as amended by Public Law 103–160. In accordance with section 2905(b)(6), this property is subject to a one-time publication under the McKinney Act after which property not provided to homeless assistance providers will not be published again unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication.

(3) Providers of assistance to the homeless shall then have 60 days in which to submit expressions of interest to HHS in any of the listed properties. If a provider indicates an interest in a listed property, it shall have an additional 90 days after submission of its written expression of interest to submit a formal application to HHS, a period which HHS can extend. HHS shall then have 25 days after receipt of a completed application to review and complete all actions on such applications.

(4) During this screening process (from 60 to 175 days following the **Federal Register** publication, as appropriate), disposal agencies shall take no final disposal action or allow reuse of property that HUD has determined suitable and that may become available for homeless assistance unless and until:

(i) No timely expressions of interest from providers are received by HHS;

(ii) No timely applications from providers expressing interest are received by HHS; or,

(iii) HHS rejects all applications received for a specific property.

(5) The Military Department should promptly inform the affected LRA, the Governor of the State, local governments, and agencies which support public benefit conveyances of the date the surplus property will be available for community reuse if:

(i) No provider expresses an interest to HHS in a property with the allotted 60 days;

(ii) There are expressions of interest by homeless assistance providers, but no application is received by HHS from such a provider within the subsequent

90-day application period (or within the longer application period if HHS has granted an extension); or

(iii) HHS rejects all applications for a specific property at any time during the 25 day HHS review period.

(6) The LRA shall have 1 year from the date of notification under paragraph (b)(5) of this section to submit a written expression of interest to incorporate the remainder of the property into a redevelopment plan.

(7) During the allotted 1-year period for the LRA to submit a written expression of interest for the property, surplus properties not already approved for homeless reuse shall not be available for homeless assistance. The surplus properties will also not be advertised by HUD as suitable during these 1-year periods. The surplus property may be available for interim leases consistent with paragraph (g) of this section.

(8) If the LRA does not express in writing its interest in a specific property during the allotted 1-year period or it notifies the Military Department it is not interested in the property, the disposal agency shall again notify HUD of the date of availability of the property for homeless assistance. HUD may then list the property in the **Federal Register** as suitable and available after the base closes following the procedures of the McKinney Act.

(c) *Reserved.* Additional regulations will be promulgated in a publication of the Departments of Defense and Housing and Urban Development to address state and local screening and approval of redevelopment plans for installations covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421).

(d) *Local Redevelopment Authority and the Redevelopment Plan.* (1) The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Generally, there will be one recognized LRA per installation.

(2) The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should consider notices of interest received under the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421). This section shall not be construed to require a plan that is enforceable under state and local land use laws, nor is it intended to create any exemption from such laws.

(3) The Military Department will develop a disposal plan and complete the appropriate environmental documentation no later than 12 months from receipt of the redevelopment plan. The local redevelopment plan will generally be used as the basis for the proposed action in conducting environmental analyses required by under the National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4332 *et seq.*). The disposal plan will specifically address the methods for disposal of property at the installation, including conveyances for homeless assistance, public benefit transfers, public sales, Economic Development Conveyances and other disposal methods.

(i) In the event there is no LRA recognized by DoD and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph (a)(13) of this section, (unless an extension of time has been granted by the Assistant Secretary of Defense for Economic Security), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

(e) Economic development conveyances. (1) Section 2903 of Public Law 103–160 gives the Secretary of Defense the authority to transfer property to local redevelopment authorities for consideration in cash or in kind, with or without initial payment, or with only partial payment at time of transfer, at or below the estimated present fair market value of the property. This authority creates an additional tool for local communities to help spur economic opportunity through a new real property conveyance method specifically designed for economic development, referred to as the ''Economic Development Conveyance'' (EDC).

(2) The EDC can only be used when other surplus federal property disposal authorities for the intended land use cannot be used to accomplish the necessary economic redevelopment.

(3) An LRA is the only entity able to receive property under an EDC.

(4) A properly completed application will be the basis for a decision on whether an LRA will be eligible for an EDC. An application should be submitted by the LRA after a Redevelopment Plan is adopted by the LRA. The Secretary of the Military Departments shall establish a reasonable time period for submission of the EDC application after consultation with the LRA. The Military Departments will review the applications and make a decision whether to make an EDC based on the criteria specified in paragraph (e)(7) of this section. The terms and conditions of the EDC will be negotiated between the Military Departments and the LRA. Bases in rural areas shall be conveyed with no consideration if they meet the standards in paragraph (f)(5) of this section.

(5) The application should explain why an EDC is necessary for economic redevelopment and job creation. In addition to the elements in paragraph (e)(5) of this section, after Military Department review of the application, additional information may be requested to allow for a better evaluation of the application. The application should also contain the following elements:

(i) A copy of the adopted redevelopment plan.

(ii) A project narrative including the following:

(*A*) A general description of property requested.

(*B*) A description of the intended uses.

(*C*) A description of the economic impact of closure or realignment on the local communities.

(*D*) A description of the financial condition of the community and the prospects for redevelopment of the property.

(*E*) A statement of how the EDC is consistent with the overall Redevelopment Plan.

(iii) A description of how the EDC will contribute to short- and long-term job creation and economic redevelopment of the base and community, including projected number, and type of new jobs it will assist in creating.

(iv) A business/operational plan for the EDC parcel, including such elements as:

*(A)* A development timetable, phasing schedule and cash flow analysis.

*(B)* A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated present fair market value of the property.

*(C)* A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.

*(D)* Local investment and proposed financing strategies for the development.

(v) A statement describing why other authorities—such as public or negotiated sale and public benefit transfers for education, parks, public health, aviation, historic monuments,

prisons, and wildlife conservation—cannot be used to accomplish the economic development and job creation goals.

(vi) If a transfer is requested for less than the estimated present fair market value (''FMV''), with or without initial payment at the time of transfer, then a statement should be provided justifying the discount. The statement should include the amount and form of the proposed consideration, a payment schedule, the general terms and conditions for the conveyance, and projected date of conveyance.

(vii) A statement of the LRA's legal authority to acquire and dispose of the property.

(6) Upon receipt of an application for an EDC, the Secretary of the Military Department will determine whether an EDC is needed to spur economic development and job creation and examine whether the terms and conditions proposed are fair and reasonable. The Military Department may also consider information independent of the application, such as views of other federal agencies, appraisals, caretaker costs and other relevant material. The Military Department may propose and negotiate any alternative terms or conditions that it considers necessary.

(7) The following factors will be considered, as appropriate, in evaluating the application and the terms and conditions of the proposed transfer, including price, time of payment and other relevant methods of compensation to the federal government.

(i) Adverse economic impact of closure or realignment on the region and potential for economic recovery after an EDC.

(ii) Extent of short- and long-term job generation.

(iii) Consistency with overall Redevelopment Plan.

(iv) Financial feasibility of the development, including market analysis and need and extent of proposed infrastructure and other investments.

(v) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the plan.

(vi) Current local and regional real estate market conditions.

(vii) Incorporation of other federal agency interests and concerns, and applicability of, and conflicts with, other federal surplus property disposal authorities.

(viii) Relationship to the overall Military Department disposal plan for the installation.

(ix) Economic benefit to the federal government, including protection and maintenance cost savings and anticipated consideration from the transfer.

(x) Compliance with applicable federal, state, and local laws and regulations.

(8) Before making an EDC, the Military Department must prepare an estimate of the present fair market value of the property, which may be expressed as a range of values. The Military Department shall consult with the LRA on valuation assumptions, guidelines and on instructions given to the person(s) making the estimation of value. The Military Department is fully responsible for completion of the valuation. The Military Department, in preparing the estimate of present fair market value shall include, to the extent practicable, the uses identified in the local redevelopment plan.

(f) *Consideration for economic development conveyances.* (1) For conveyances made pursuant to § 91.7(e), *Economic development conveyances,* the Secretary of the Military Department will review the application for an EDC and negotiate the terms and conditions of each transaction with the LRA. The Military Departments will have the discretion and flexibility to enter into agreements that specify the form, amount, and payment schedule. The consideration may be at or below the estimated present fair market value, with or without initial payment, in cash or in-kind and paid over time.

(2) An EDC must be one of the two following types of agreements:

(i) Consideration within the estimated range of present fair market value, as determined by the Secretary of the Military Department.

(ii) Consideration below the estimated range of present fair market value, when proper justification is provided and when the Secretary of the Military Department determines that a discount is necessary for economic redevelopment and job creation.

(3) If the consideration under an EDC is within the range of value listed in paragraph (f)(2)(i) of this section, the amount paid in the future should take into account the time value of money and include repayment of interest. Any transaction that waives or delays interest payments will be considered as a transaction below the present fair market value under paragraph (f)(2)(ii) of this section, and as such must be justified as necessary for economic development and job creation.

(4) Additional provisions may be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon compensation, including such items as predetermined release prices, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions.

(5) In a rural area, as defined by this rule, any EDC approved by the Secretary of the Military Department shall be made without consideration if the base closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation and on the prospect for their economic recovery.

(6) In those instances in which an EDC is made for consideration below the range of the estimated present fair market value of the property—or if the estimated present fair market value is expressed as a range of values, below the lowest value in that range—the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained. Additionally, the Military Departments must prepare a written statement explaining why other federal property transfer authorities could not be used to generate economic redevelopment and job creation.

(g) *Leasing of real property.* (1) Leasing of real property prior to the final disposition of closing and realigning bases may facilitate state and local economic adjustment efforts and encourage economic redevelopment.

(2) In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretaries of the Military Departments may also lease real and personal property located at a military installation to be closed or realigned under a base closure law, pending final disposition, for less than fair market value if the Secretary concerned determines that:

(i) A public interest will be served as a result of the lease; and

(ii) The fair market value of the lease is unobtainable, or not compatible with such public benefit.

(3) Pending final disposition of an installation, the Military Departments may grant interim leases which are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Military Department will generally lease to the LRA but can lease property directly to other entities. If the interim lease is entered into prior to completion of the final disposal decisions under the National Environmental Policy Act (NEPA) process, the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing should not delay the final disposal of the property. After completion of the final disposal decisions, the term of the lease may be longer than five years.

(4) If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases will be applied by the lessee to the protection, maintenance, repair, improvement and costs related to the property at the installation consistent with 10 U.S.C. 2667.

(h) *Personal property.* (1) This section outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a community reuse plan.

(2) Each Military Department and DoD Component, as appropriate, will take an inventory of the personal property, including its condition, within 6 months after the date of approval of closure or realignment. This inventory will be limited to the personal property located on the real property to be disposed of by the Military Department or DoD Component. The inventory will be taken in consultation with LRA officials. If there is no LRA, the Military Department will offer to provide a consultation for the local government in whose jurisdiction the installation is wholly located or for a local government agency or a state government agency designated for that purpose by the chief executive officer of the state. Based on these consultations, the base commander will determine the items or category of items that have the potential to enhance the reuse of the real property.

(3) Except for property subject to the exemptions in paragraph (h)(5) of this section, personal property with potential to enhance the reuse of the real estate shall remain at a base being closed or realigned until disposition is otherwise determined by the Military Department. This determination will be made no earlier than 90 days after the Military Department receives an adopted redevelopment plan or when notified by the LRA that there will be no redevelopment plan.

(4) National Guard property demonstrably identified as being purchased with state funds is not available for reuse planning or subject to transfer for redevelopment purposes, unless so identified by the state property officer. National Guard property purchased with federal funds is subject to inventory and may be made available for redevelopment planning purposes.

(5) Personal property may be removed upon approval of the base commander or higher authority, within and as prescribed by the Military Department, after the inventory required in paragraph (h)(2) of this section has been sent to the redevelopment authority, when:

(i) The property, other than ordinary fixtures, is required for the operation of a transferring unit, function, component, weapon, or weapons system;

(ii) The property is required for the operation of a unit, function, component, weapon, or weapon system at another installation within the Military Department, subject to the following conditions:

(*A*) Ordinary fixtures, including but not limited to such items as blackboards, sprinklers, lighting fixtures, and electrical and plumbing systems, shall not be removed under paragraph (h)(5)(ii) of this section; and,

(*B*) Other personal property may be removed under paragraph (h)(5)(ii) of this section only after the Military Department has consulted with the LRA and, with respect to disputed items, upon the approval of an Assistant Secretary of the Military Department.

(iii) The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, chemical items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items;

(iv) The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Military Department concerned and the redevelopment authority);

(v) The property is stored at the installation for distribution (including spare parts or stock items). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;

(vi) The property meets known requirements of an authorized program of another federal department or agency that would have to purchase similar items, and the property is the subject of a written request received from the head of the other Department or Agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. In this context, *purchase* means the federal department or agency intends to obligate funds in the current quarter or next six fiscal quarters. The federal department or agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;

(vii) The property belongs to nonappropriated fund instrumentalities (NAFI) and other non-Defense Department activities. Such property may be removed at the Military Departments' discretion because it does not belong to the Defense Department and, therefore, it may not be transferred to the redevelopment authority under this section. For NAFI property, separate arrangements for communities to purchase such property are possible and may be negotiated with the Military Department concerned; and,

(viii) The property is needed elsewhere in the national security interest of the United States as determined by the Secretary of the Military Department concerned. This authority may not be redelegated below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any entity of the Department of Defense or other federal agency.

(6) In addition to the exemptions in paragraph (h)(5) of this section, the Military Department or DoD Component is authorized to substitute an item similar to one requested by the redevelopment authority.

(7) Personal property not subject to the exemptions in paragraph (h)(5) of this section may be conveyed to the redevelopment authority as part of an economic development conveyance for the real property if the Military Department makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan.

(8) Personal property may also be conveyed separately to the LRA under an economic development conveyance for personal property. This type of economic development conveyance can be made if the Military Department determines that the transfer is necessary for the effective implementation of a redevelopment plan with respect to the installation. Such determination shall be based on the LRA's timely application for the property, which should be submitted to the Military Department upon completion of the redevelopment plan. The application must include the LRA's agreement to accept the personal property after a reasonable period. The transfer will be subject to reasonable limitations and conditions on use.

(i) The Military Department will restrict the LRA's ability to acquire personal property at less than fair market value solely for the purpose of releasing or reselling it, unless the LRA will lease or sell the personal property to entities which will place it into productive use in accordance with the

redevelopment plan. The LRA must retain personal property conveyed under an EDC for less than fair market value for at least one year if it is valued at less than $5,000, or at least two years if valued at more than $5,000. Any proceeds from such leases or sales must be used to pay for protection, maintenance, repair or redevelopment of the installation. The LRA will be required to certify its compliance with the provisions of this section at the end of each fiscal year for no more than two years after transfer. The certification may be subject to random audits by the Government.

(9) Personal property that is not needed by the Military Department or a federal agency or conveyed to a redevelopment authority (or a state or local jurisdiction in lieu of a local redevelopment authority) will be transferred to the Defense Reutilization and Marketing Office for processing in accordance with 41 CFR parts 101–43 through 101–45, ''Federal Property Management Regulations,'' and DoD 4160.21–M.[3]

(10) Useful personal property determined to be surplus to the needs of the federal government by the Defense Reutilization and Marketing Office and not qualifying for transfer to the redevelopment authority under an economic conveyance may be donated to the community or redevelopment authority through the appropriate State Agency for Surplus Property (SASP). Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP. Property subsequently not needed by the community or redevelopment authority shall be disposed of as required by its SASP.

(i) *Maintenace, utilities, and services.* (1) Facilities and equipment located on bases being closed are often important to the eventual reuse of the base. This section provides maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates based redevelopment.

(2) In order to ensure quick reuse, the Military Department, in consultation with the LRA, will establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth below. Where agreement between the Military Department and the LRA cannot be reached, the Secretary of the Military Department will determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

(i) Exceed the standard of maintenance and repair in effect on the date of closure or realignment approval;

(ii) Be less than maintenance and repair required to be consistent with federal government standards for excess and surplus properties (i.e., 41 CFR 101–47.402 and 41 CFR 101–47.4913); or,

(iii) Require any property improvements, including construction, alteration, or demolition, except when the demolition is required for health, safety, or environmental purposes, or is economically justified in lieu of continued maintenance expenditures.

(3) The initial levels of maintenance and repair shall be tailored to the redevelopment plan, and shall include the following provisions:

(i) The facilities and equipment that are likely to be utilized in the near term will be maintained at levels that shall prevent undue deterioration and allow transfer to the LRA.

(ii) The scheduled closure or realignment date of the installation will not be delayed.

(4) The Military Department will not reduce the agreed upon initial maintenance and repair levels unless it establishes a new arrangement (e.g., termination of caretaking upon leasing of property) in consultation with the LRA.

(5) The Military Department will determine the length of time it will maintain the initial levels of maintenance and repair for each closing or realigning base. This determination will be based on factors such as the closure/realignment date and the timing of the completion of the National Environmental Policy Act (NEPA) documentation on the proposed disposal (such as a finding of no significant impact and disposal decision following an environmental assessment or the record of decision following an environmental impact statement).

(i) For a base that has not closed prior to the publication of this rule, and where the Military Department has completed the NEPA analysis on the proposed disposal before the operational closure of that base, the time period for the initial levels of maintenance and repair normally will extend no longer than one year after operational closure of the base.

(ii) For a base that has not closed prior to the publication of this rule, and where the base's operational closure precedes the completion of the NEPA analysis on the proposed disposal, the time period for the initial levels of maintenance and repair will normally extend no longer than one year after operational closure or 180 days after the Secretary of the Military Department approves the NEPA analysis.

(iii) For a based that closed prior to the publication of this rule, the time period for the existing levels of maintenance will normally extend no longer than one year from the date of the publication of this rule or six years after the date of approval of the closure or realignment (whichever comes first).

(6) The Military Department may extend the time period for the initial levels of maintenance and repair for property still under its control for an additional period, if the Secretary of the Military Department determines that the Local Redevelopment Authority is actively implementing its redevelopment plan, and such levels of maintenance are justified.

(7) Once the time period for the initial or extended levels of maintenance and repair elapses, the Military Department will reduce the levels of maintenance and repair to levels consistent with federal government standards for excess and surplus properties (i.e., 41 CFR 101–47.402 and 41 CFR 101–47.4913).

Dated: July 14, 1995.

**L.M. Bynum,**

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

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**BILLING CODE 5000–04–M**

[3] Copies may be obtained from the Defense Logistics Agency, Attn: DLA–XPD, Alexandria, VA 22304–6100.

## Department of the Air Force

### 32 CFR Part 855

**RIN 0701–AA42**

### Civil Aircraft Use of United States Air Force Airfields

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force revised its regulations on civil aircraft use of United States Air Force airfields to reflect current policies and statutes. This revision establishes responsibilities and prescribes procedures for requesting and granting civil aircraft access to Air Force airfields.

**EFFECTIVE DATE:** July 20, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mrs. R. A. Young, HQ USAF/XOOBC, 1480 Air Force Pentagon, Room 5C966, Washington, DC 20330–1480, telephone 703 697–5967.

**SUPPLEMENTARY INFORMATION:** On March 22, 1995, the Department of the Air