

implementation of 480-03-19.816/817.102(e) (1) and (2) by amending the Virginia program as follows:

(1) Define the term "suitable." The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas;

(2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill;

(3) Add to 480-03-19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled;

(4) Add a definition of "small" to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope; and

(5) Add a requirement that whenever coal refuse is placed on pre-existing benches for the purpose of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed.

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 92**

**RIN 0790-AG18**

**Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule promulgates policies and procedures, developed by both the Departments of Defense and Housing and Urban Development, for implementing the Base Closure Community Redevelopment and Homeless Assistance Act (the "Redevelopment Act"). The Department of Housing and urban Development will

be making a similar publication in 24 CFR part 586.

**DATES:** This part is effective August 8, 1995. Comments must be received by October 10, 1995.

**ADDRESSES:** Comments must be forwarded to the Office of the Assistant Secretary of Defense (Economic Security), 3300 Defense Pentagon, Room 1D760, Washington, DC 20301-3300.

This rule was written jointly by the Department of Defense and the Department of Housing and Urban Development. All public comments will be reviewed by both Departments and subsequent amendments will be drafted together.

**FOR FURTHER INFORMATION CONTACT:** Robert Hertzfeld, Office of Assistant Secretary of Defense (Economic Security), Department of Defense, 3300 Defense Pentagon, Room 1D-760, Washington, DC 20301-3300, (703) 695-1470 or Thelma Moore, Deputy Assistant Secretary for Planning/Community Viability, Office of Community Planning and Development, Room 7204, Department of Housing and urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708-2484 or, TDD number for hearing and speech-impaired, (202) 708-0738 (these telephone numbers are not toll-free).

**SUPPLEMENTARY INFORMATION:** The Redevelopment Act amends the Base Closure and Realignment Act of 1988 and the Defense Base Closure and Realignment Act of 1990, both as amended by the National Defense Authorization Act for Fiscal Year 1994.

**I. Certification**

It has been determined that this interim rule is not a significant regulatory action. This part is not subject to the Regulatory Flexibility Act because it would not have a significant economic impact on a substantial number of small entities. This interim rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

**II. Other Matters**

*A. Justification for Interim Rulemaking*

Although rulemaking procedures generally require the publication of a proposed rule before regulations are made final and effective, there exists good cause to publish this rule for effect without first soliciting public comment. Forty-five military installations from the 1988, 1991, or 1993 base closure/realignment rounds have elected to be included under this new process. HUD anticipates the receipt of applications in the very near future from the LRAs representing these closure/realignment

sites. Moreover, a fourth round of military base closures and realignments was initiated with the Secretary of Defense submitting a list of proposed closures/realignments to the Defense Base Closure and Realignment Commission on February 28, 1995. The Commission submitted its recommendations to the President on June 30, 1995. Upon approval by the President and Congress, this rule will apply immediately to the installations on this 1995 closure/realignment list.

To delay the implementation of this law until publication of a final rule would mean that base reuse would be delayed until a final rule is published. LRAs are awaiting the guidance contained in this rule, necessitating implementation through this interim rule.

DoD and HUD invite public comment on this interim rule within the 60-day comment period. All comments will be considered during the development of the final rule.

*B. Impact on the Environment*

HUD has made a Finding of No Significant Impact with respect to the environment in accordance with HUD regulations in 24 CFR part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Department of Housing and Urban Development, Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

*C. Impact on the Family*

The General Counsel of HUD, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule would not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

**III. Background**

*A. Legislative Summary*

This interim rule promulgates policy and procedures for implementing the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 ("Redevelopment Act") (Pub. L. 103-421). The Redevelopment Act amends the Base Closure and Realignment Act of 1988 (Pub. L. 100-526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510) (both at 10 U.S.C. § 2687, note), both as amended by the National Defense

Authorization Act for Fiscal Year 1994 (Pub. L. 103-160).

#### *B. Circumstances That Led to This New Law*

Title V of the Stewart B. McKinney Homeless Assistance Act of 1987, as amended, 42 U.S.C. 11411 ("Title V"), granted first priority on use of all surplus federally-owned real and personal property, including former military installations, to the homeless. The Title V provisions have worked reasonably well for small parcels, however, in the base closure and realignment environment the processes for reuse planning and homeless use were independent and the timing incompatible. On October 25, 1994, the President signed the Redevelopment Act, which exempts base closure and realignment property from Title V and substitutes a new community-based process wherein representatives of the homeless will work directly with Local Redevelopment Authorities (LRAs) on the reuse of former military installations.

The Redevelopment Act provides a process which aims to balance the needs of the homeless with other development interests in the community in the vicinity of the installation. Congress recognized that in order to achieve this balance, all interests must be "put on the table" at the same time. Accordingly, the Redevelopment Act requires the LRA to accept notices of interest simultaneously from state and local governments and other interests that include development and public purpose uses, including public benefit uses pursuant to the federal surplus property disposal authorities.

#### *C. Applicability*

The Redevelopment Act applies to all bases that are approved for closure/realignment under Pub. L. 101-510 after October 25, 1994 as well as those installations approved for closure/realignment prior to October 25, 1994 under either Pub. L. 100-526 or Pub. L. 101-510 that have elected to come under the new process prior to December 24, 1994. All other installations approved for closure/realignment prior to October 25, 1994 that have not elected to come under the new process, are covered by the Title V process as amended by Pub. L. 103-160. The Title V process continues to apply to all other unutilized, underutilized, excess, or surplus property owned by the Federal government, including military properties that are not part of a base closure or realignment.

LRAs which have elected to come under the Redevelopment Act should

pay particular attention to § 92.20(c)(1) of this part which extends the permissible time period within which an LRA can set its date for receipt of notices of interest. For LRAs which have adequately complied with the statutory time limitation prior to publication of this interim rule, HUD will not expect them to reopen their notice period; however, those which have not yet so complied will be expected to follow this requirement. For all installations selected for closure or realignment prior to 1995 that have elected this process, the LRA must complete the period for receiving notices of interest no later than 90 days from the later of the publication of this interim rule or HUD's publication of 24 CFR part 586.

The Redevelopment Act recognizes that installations approved for closure or realignment before enactment of this law are well into the planning process and should therefore be treated differently than installations approved for closure/realignment subsequent to enactment. As a result, § 92.20(c) of this part allows for greater flexibility concerning the commencement and requirements of the outreach efforts to representatives of the homeless, state and local governments, and other interested parties in those communities.

The Redevelopment Act includes special considerations for providers who had applications pending on closure or realignment and disposal properties under Title V at the time of enactment of the Redevelopment Act. LRAs must consider and specifically address any applications that were pending as of the date of enactment. In the case of providers whose applications have been approved (but the property applied for has not been transferred or leased), the LRA must accommodate the provider with substantially equivalent property on or off the installation, sufficient funding to acquire such equivalent property, services and activities that meet the needs identified in the application, or a combination of such property, funding, services, and activities.

#### *D. Roles of DoD and HUD*

DoD is responsible, through the Military Departments, for closing and disposing of the installations approved for closure or realignment. On July 20, 1995 (60 FR 37337), DoD published a final rule implementing other activities associated with the closure, realignment and disposal of military installations including the process whereby properties at an installation are screened for reuse by the Federal government. The actions undertaken by the Military Departments under that regulation

precede the actions to be taken under this part. Interested parties should obtain copies of both.

DoD, through the Office of Economic Adjustment is responsible for recognizing the LRA. The LRA must, in accordance with § 92.30 of this part, submit to both HUD and DoD an application, which includes the redevelopment plan and the homeless assistance submission. HUD will review the application and notify DoD and the LRA of its findings. HUD's standards of review are described at § 92.35(b) of this part. Throughout its review, HUD will be in contact with the LRA for any clarifications or additional information it needs to complete the review.

Pursuant to § 92.25 of this part, representatives of HUD will be available to provide assistance to LRAs throughout the planning process. LRAs are encouraged to contact their HUD field office for technical assistance including lists of homeless providers operating in the vicinity of the installation. Representatives of HUD will be available to attend workshops held under § 92.20(c)(3)(ii) of this part and other meetings as requested by the LRA. The planning process created by The Redevelopment Act is community-based. HUD neither anticipates nor desires to mandate results, but will seek to expedite and assist all parties in arriving at an equitable balance between economic redevelopment and homeless needs. DoD and HUD anticipate that the reuse plans will be general land use plans for which HUD will be reviewing the balance made between homeless assistance and economic development needs rather than the suitability of a specific site for use by the homeless.

Although certain sites may be identified for use for the homeless, DoD and HUD recognizes that the environmental review process may show that certain properties are not suitable for the designated use. If such a finding is made, the LRA and the representative of the homeless should negotiate for alternate arrangements that would enable the same balance of interests that was made originally. If, because of the environmental condition, less property is available for reuse, it is possible that less property would be made available for homeless use. The frequency of this problem should be limited because of the extensive environmental review throughout the process, and with dialogue between the LRA and the Military Department and the Base Realignment and Closure Environmental Coordinator.

### E. HUD's Approach

#### 1. Need: Continuum of Care

In its review, HUD will consider whether the redevelopment plan promotes projects and activities that address the expressed needs within the current homeless service system. The homeless assistance submission should assess the current homeless service system in the vicinity of the installation and the extent to which the redevelopment plan may support those notices of interest that propose to address the critical gaps in the system.

A comprehensive homeless service system is called a continuum of care. The continuum of care model is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs—physical, economic, and social. Dealing effectively with the problems of homelessness requires a comprehensive system of housing and necessary services for each stage—from emergency shelter to housing with no established limitation on the amount of time of residence, as well as a strong prevention strategy.

A continuum of care system includes:

(a) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless.

(b) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(c) Transitional housing with appropriate supportive services to help those homeless individuals and families that are not prepared to make the transition to independent living;

(d) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and,

(e) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

Supportive services are critical to all components of the continuum of care. These services include, but are not limited to case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment,

child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements and referral to veterans services and legal services. These services enable homeless persons and families to move through the continuum of care toward independent living.

#### 2. Impact: Consolidated Plan and Other Local Plans

HUD will consider whether the homeless assistance submission is consistent with the Consolidated Plan or with any other existing economic, community and housing plans adopted by the jurisdictions in the vicinity of the installation and whether it furthers the overall goals and objectives of these plans.

The Consolidated Plan encompasses the planning, application, and reporting requirements of four formula grant programs administered by HUD's Office of Community Planning and Development: Community Development Block Grant, HOME Investment Partnerships, Housing Opportunities for Persons with AIDS, and Emergency Shelter Grants. The requirements of the Consolidated Plan can be found in the final rule published in the Federal Register on January 5, 1995 at 60 FR 1878 and codified at 24 CFR Part 91. Some communities in the vicinity of an installation are eligible for some or all of these programs, and if eligible, are required to submit to HUD a Consolidated Plan. LRA's that encompass non-entitlement areas, or those without a Consolidated Plan should refer to other long-range plans or alternative resources that exist and have been developed within the jurisdiction(s) they represent. LRAs should use the information in these plans in evaluating the notices of interest received from representatives of the homeless.

#### 3. Balance in the Community Between the Need for Homeless Housing and Services, Economic Redevelopment and Other Development

HUD will consider how the LRA balances the community's homeless needs with the need for economic and other development. LRAs are encouraged to propose activities that advance economic and other development objectives which also address the needs of homeless persons and families.

For example, an LRA may propose that a large warehouse facility be

targeted for use as a light manufacturing facility. The LRA estimates that this facility will employ many semi-skilled employees. In its redevelopment plan, the LRA proposes that prospective users of this property will be asked to notify the homeless job search agency, an organization being supported with property in the LRA's homeless assistance submission, of any available positions at the facility. The prospective users of the facility will be asked by the LRA to interview applicants referred by the agency and use its best efforts to hire qualified persons. Under this scenario, addressing the economic development needs of a community also addresses some of the needs of persons that are homeless. Solutions to diverse community problems need not be mutually exclusive.

#### 4. Outreach to Representatives of the Homeless

HUD will examine efforts made by the LRA to both advertise the availability of property to representatives of the homeless and to help representatives of the homeless find a match between their needs and local resources, including the facilities at the installation. HUD will consider whether the advertisement requirements of § 92.20(c) of this part were met, but more importantly, HUD will focus on the quality of the contact. LRAs should design their submissions. While LRAs can emphasize particular needs, outreach efforts should not limit the possible range of expressions of interest.

#### 5. Properties: Uniqueness of each Installation

The application requirements described at § 92.30 of this part apply to installations of any size, type or configuration. Although the regulation makes no distinction between small and large installations, HUD will work closely with the LRA for each installation to help it develop an application that makes sense for that particular installation. All LRAs must submit a complete application. HUD will then judge the application on its individual merits.

HUD recognizes that redevelopment plans and homeless assistance submissions developed by LRAs for major installations, which may encompass thousands of acres, will be more lengthy and complicated than those of 3 and 4 acre reserve facilities that contain few buildings. Moreover, an installation located in a small rural

community with a small homeless population will not be held to the same level of detail as will a large metropolitan area with a large homeless population.

#### F. Eligible Activities

The intent of the Redevelopment Act is to focus on a community-based process to address local homeless needs within the context of the base reuse and other community and economic needs. LRAs and representatives of the homeless are encouraged to be creative. Eligible activities may include:

1. Outreach services and assessment services;
2. Emergency shelter;
3. Transitional housing, social services tied to transitional housing or services located apart from housing units;
4. Housing that has no established limitation on the amount of time of residence; and,
5. Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

LRAs and representatives of the homeless are cautioned, however, that under the Redevelopment Act, no-cost transfers of former military properties are limited to transfers to representatives of the homeless. Redevelopment are limited to transfers to representatives of the homeless. Redevelopment plans proposing transfers of property from the Military Department to homeless individuals or families for free will not be accepted.

#### List of Subjects in 32 CFR Part 92

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

Accordingly, title 32, chapter I, subchapter C, is amended by adding Part 92 to read as follows:

#### PART 92—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

- Sec.
- 92.1 Purpose.
  - 92.5 Definitions.
  - 92.10 Applicability.
  - 92.15 Waivers and extensions of deadlines.
  - 92.20 Overview of the process.
  - 92.25 HUD's negotiations and consultations with the LRA.
  - 92.30 LRA application.
  - 92.35 HUD's review of the application.
  - 92.40 Adverse determinations.
  - 92.45 Disposal of buildings and property.

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

#### §92.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act (Pub. L. 103-421, approved October 25, 1994). It describes the roles and responsibilities of the Department of Defense (DoD), the Department of Housing and Urban Development (HUD), Local Redevelopment Authorities (LRAs), and representatives of the homeless in planning and implementing the reuse of domestic military installations that are approved for closure or realignment. Specifically, this part describes the guidance DoD and HUD provide to the LRA, the planning documents the LRA develops and submits to DoD and HUD in planning the reuse of these installations, and the standards of review that HUD observes when reviewing the documents submitted by the LRA. Pub. L. 103-421 authorizes HUD to determine whether the plan for the reuse of the installation proposed by LRA balances the community development, economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities.

#### §92.5 Definitions.

As used in this part:

**CERCLA.** Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*)

**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 LRA for the installation.

**Consolidated Plan.** The plan prepared in accordance with the requirements of 24 CFR part 91.

**Continuum of care system.** (1) Comprehensive homeless assistance system that includes:

- (i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;
- (ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;
- (iii) Transitional housing with appropriate supportive services to help those homeless individuals and families that are not prepared to make the transition to independent living;
- (iv) Housing with or without supportive services that has no

established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and

(v) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

(2) Supportive services enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.

**Day.** One calendar day including weekends and holidays.

**DoD.** Department of Defense.

**HHS.** Department of Health and Human Services.

**Homeless person.**

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

**HUD.** Department of Housing and Urban Development.

**Installation.** A base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD which is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100-526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510) (both at 10 U.S.C. 2687, note), both as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160, 107 Stat. 1909).

**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.

*NEPA.* National Environmental Policy Act of 1969 (42 U.S.C. 4320).

*OEA.* Office of Economic Adjustment, U.S. Department of Defense.

*Private nonprofit organization.* An organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designed an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

*Redevelopment plan.* A conceptual land use plan prepared by the recognized LRA to guide local reuse of the former military installation.

*Representative(s) of the homeless.* A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless.

*Substantially equivalent.* Property that is functionally suitable for the approved Title V application. For example, if the representative of the homeless had an approved Title V application for a building that would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.

*Substantially equivalent funding.* Sufficient funding to acquire a substantially equivalent facility.

*Surplus property.* Any property not required for the needs and the discharge of the responsibilities of any Federal land holding agency as determined by the Secretary of Defense.

*Title V.* Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. 11411) as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160).

*Urban county.* A county within a metropolitan area as defined at 24 CFR 570.3.

#### § 92.10 Applicability.

(a) *General.* This part applies to all installations that are approved for closure/realignment by the President and Congress under Pub. L. 101-510 after October 25, 1994.

(b) *Request for inclusion under this process.* This part also applies to installations that were approved for closure/realignment under either Pub. L. 100-526 or Pub. L. 101-510 prior to October 25, 1994 and for which an LRA submitted a request for inclusion under this part to DoD by December 24, 1994. A list of such requests was published in the **Federal Register** on May 30, 1995 (60 FR 28089-28091).

(1) *Installations with pending but not approved Title V applications as of October 25, 1994.* The LRA shall consider and specifically address any application for use of buildings and property to assist the homeless that were received by HHS prior to October 25, 1994 and were pending with the Secretary of HHS on that date. These pending requests shall be addressed in the LRA's homeless assistance submission.

(2) *Installations with approved Title V applications.* Where property has an approved Title V application, yet has not been assigned or otherwise disposed of by the Military Department, the LRA must insure that its homeless assistance submission provides the Title V applicant with:

- (i) The property requested;
  - (ii) Properties, on or off the installation, that are substantially equivalent to those requested;
  - (iii) Sufficient funding to acquire such substantially equivalent properties;
  - (iv) Services and activities that meet the needs identified in the application;
- or
- (v) A combination of the properties, funding and services and activities described previously.

(c) *Revised Title V process.* All other installations approved for closure or realignment under either Pub. L. 100-526 or Pub. L. 101-510 prior to October 25, 1994 for which there has been no request for consideration under this part, are covered by the process stipulated under Title V. Buildings or property that were transferred or leased for homeless use under Title V prior to October 25, 1994 may not be reconsidered under this part.

#### § 92.15 Waivers and extensions of deadlines.

(a) After consultation with the LRA and HUD, DoD, through the Assistant Secretary of Defense (Economic Security), upon a finding that it is in the interest of the communities affected by the closure/realignment of the installation, may extend or postpone any deadline contained in this part.

(b) Upon completion of a determination and finding of good cause, and except for deadlines and

actions required on the part of DoD, HUD may waive any provision of §§ 92.20 through 92.45 in any particular case, subject only to statutory limitations.

#### § 92.20 Overview of the process.

(a) *Responsibilities of the Military Department.* The Military Department shall make installation properties available to other DoD components and Federal agencies pursuant to 32 CFR part 91. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify HUD and will notify either the LRA, or the Chief Executive Officer of the state, as appropriate, and publish a list of surplus property on the installation that will be available for reuse in the **Federal Register** and a newspaper of general circulation in the communities in the vicinity of the installation.

(b) *Recognition of the LRA.* As soon as practicable after the list of installations recommended for closure or realignment is approved, DoD, through OEA, will recognize an LRA for the installation. Upon recognition, DoD shall publish the name, address, and point of contact for the LRA in the **Federal Register** and in a newspaper of general circulation in the communities in the vicinity of the installation.

(c) *Responsibilities of the LRA.* The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. Although the process may begin at any time after this date of approval, the local reuse planning process must begin no later than the completion of Federal screening procedures which is deemed to be the date of the DoD **Federal Register** publication of available property described at § 92.20(a). For those installations that have begun the process described in this part prior to publication of this rule, HUD will, on a case by case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the **Federal Register** publication described in § 92.20(a), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from state and local governments, representatives of the homeless, and other interested parties.

This publication shall include the name, address, telephone numbers and the point of contact for the LRA and information on the prescribed form and contents of the notice of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest.

(i) For all installations selected for closure or realignment prior to 1995 that have elected to proceed under Pub. L. 103-421 and which have begun receiving notices of interest prior to publication of this rule, the LRA shall have accepted notices of interest for not less than 30 days and not more than 180 days from the date the LRA submitted a request for inclusion under this process as described at § 92.10(b). For installations selected for closure or realignment prior to 1995 for which the LRA has not begun or has not completed the acceptance of notices of interest prior to publication of this part, the LRA shall accept notices of interest for not less than 30 days and not more than 90 days from the later of the date of publication of this part or the date of HUD's publication of 24 CFR part 586.

(ii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days.

(2) Prescribe the form and contents of notices of interest.

(i) The LRA may not release to the public any information submitted under this part without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the state and communities in which the installation concerned is located.

(ii) The notices of interest from representatives of the homeless must include:

(A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;

(B) A description of the need for the program;

(C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;

(D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;

(E) A description of the representative of the homeless which is submitting the notice, its capacity to carry out the program and its financial plan for implementing the program; and

(F) An assessment of the time required in order to commence carrying out the program.

(iii) The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities, along with a description of the planned use.

(3) Undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that may be interested in assisting the homeless within the vicinity of the installation.

(i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in § 92.20(c)(3)(ii).

(ii) The LRA in coordination with the Military Department and HUD shall conduct at least one workshop where representatives of the homeless have an opportunity to:

(A) Learn about the closure/realignment and disposal process;

(B) Tour the buildings and properties available either on or off the installation;

(C) Learn about the LRA's process and schedule for receiving notices of interest as guided by § 92.20(c)(2); and

(D) Learn about any known land use constraints affecting the available property and buildings.

(iii) The LRA should meet with representatives of the homeless that express interest in discussing possible uses for these properties to alleviate gaps in the continuum of care.

(4) Consider various properties in response to the notices of interest. The LRA may consider property that is located off the installation.

(5) Develop an application, which includes the redevelopment plan and the homeless assistance submission. This application shall consider the notices of interest received from state and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under the Federal

Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472); representatives of the homeless; commercial, industrial, and residential development interests; and, other interests. From the deadline date for receipt of notices of interest described at § 92.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to DoD and HUD. The application requirements are described at § 92.30.

(6) Make the draft application available to the public for review and comment throughout the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submittal to HUD and DoD, and a summary of these public comments shall be included in the application when it is submitted.

(d) *State, local, and public benefit screening.* The LRA should, while conducting its outreach efforts, work with the federal agencies that sponsor public benefit transfers under the Federal Property and Administrative Services Act of 1949. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. These requests are not required to be met, but must be considered.

#### **§ 92.25 HUD's negotiations and consultations with the LRA.**

HUD may negotiate and consult with the LRA before or during the course of preparation of the LRA application and during HUD's review thereof with a view toward avoiding any preliminary determination that the application does not meet any requirement of this part. HUD will provide the LRA with a list of persons and organizations that are representatives of the homeless operating in the vicinity of the installation.

#### **§ 92.30 LRA application.**

(a) *Redevelopment plan.* A copy of the redevelopment plan shall be part of the application.

(b) *Homeless assistance submission.* This component of the application shall include the following:

(1) *Information about homelessness in the communities in the vicinity of the installation.*

(i) A list of all the jurisdictions which comprise the LRA.

(ii) A description of the unmet need in the continuum of care system within each jurisdiction, which should include information about any gaps that exist in the continuum of care for particular homeless subpopulations. The source for this information shall depend upon the size and nature of the jurisdiction(s) that comprise the LRA. LRAs representing:

(A) Jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table, Priority Homeless Needs Assessment Table, and narrative description thereof from that Consolidated Plan including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table, Priority Homeless Needs Assessment Table, and narrative description thereof from that Consolidated Plan including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the jurisdiction it represents.

(C) Jurisdictions not described by paragraph (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction(s) it represents and a brief inventory of the facilities and services that assist homeless persons and families within each jurisdiction. LRAs that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) *Proposed assistance to homeless persons and families.* (i) A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet the needs of the homeless by addressing the gaps in the continuum of care. The activities need not be limited to expressions of interest in property, but may also include discussion of how economic redevelopment may benefit the homeless;

(ii) A copy of each notice of interest from representatives of the homeless for use of building and property and a description of the manner in which the LRA application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which

may include the impact of the program contained in the notice of interest on the community as described in paragraph (b)(2)(iii) of this section; and

(iii) A description of the impact that the implemented redevelopment plan will have on the community. This shall include information on how the LRA's redevelopment plan might impact the character of existing neighborhoods adjacent to the properties proposed to be used to assist the homeless and should discuss alternative plans. Impact on schools, social services, transportation, infrastructure, concentration of minorities and/or low income persons also shall be discussed.

(3) *Buildings and properties.* (i) A copy of the legally binding agreements that the LRA proposes to enter into with the representative(s) of the homeless selected by the LRA to implement homeless programs that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating alternative arrangements that would enable the same balance of interests made originally in the event that an environmental review conducted under § 92.45(a) subsequent to HUD approval indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Legally binding agreements must also provide for the reversion or transfer, either to the LRA or to another entity or entities of the buildings and property in the event they cease to be used for the homeless;

(ii) A description of how buildings and properties either on or off the installation will be used to fill some of the gaps in the current continuum of care system and an explanation of the suitability of the buildings and property for that use; and

(iii) Information on the availability of general services such as transportation, police, fire, and a discussion of infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activities.

(4) *Balance with economic and other development needs.* (i) An assessment of the manner in which the application balances the expressed needs of the homeless and the needs of the communities comprising the LRA for economic redevelopment and other development; and

(ii) An explanation of how the LRA application is consistent with the appropriate Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(5) *Outreach.* The LRA shall explain how the outreach requirements described at § 92.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless with which the LRA consulted in preparing the application.

(c) *Public comments.* The LRA application shall include the materials described at § 92.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

#### § 92.35 HUD's review of the application.

(a) *Timing.* HUD shall complete a review of each application no later than 60 days after its receipt by HUD.

(b) *Standards of review.* The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether the redevelopment plan:

(1) *Need.* Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities.

(2) *Impact.* Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:

(i) Whether the plan is feasible in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community; and

(ii) Whether the application is consistent with the Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(3) *Balance.* Balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities.

(4) *Outreach.* Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation.

(i) HUD will examine whether the outreach requirements described at § 92.20(c)(3) have been fulfilled by the

LRA. HUD will carefully review the outreach process to insure that the LRA advertised the availability of installation properties to representatives of the homeless.

(ii) HUD will compare the list of homeless representatives contacted by the LRA against contacts maintained by the local HUD Field Office.

(5) *Properties.* Specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes. HUD will be mindful of the uniqueness of each installation. HUD will review this process so that it is confident that the LRA will make these buildings and properties available to representatives of the homeless in a timely fashion.

(c) *Notice of determination.* (1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to § 92.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of paragraph (b) of this section. If the application fails to meet the requirements, HUD will send the LRA:

(i) A summary of the deficiencies in the application;

(ii) An explanation of the determination; and

(iii) A statement of how the LRA must address the determinations.

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in § 92.20(c)(5), and the state turns down a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at § 92.40.

(d) *Opportunity to cure.* (1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under paragraph (c)(1) of this section within which to submit to HUD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination that the redevelopment plan fails to meet the requirements of paragraph (b) of this section.

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission, send written notification of its final determination to both DOD and the LRA.

#### § 92.40 Adverse determinations.

(a) *Solicitation of proposals.* If HUD determines that the LRA's resubmission

fails to meet the requirements of § 92.35(b) or if no resubmission is received, HUD:

(1) Shall review the original application including the notices of interest submitted by representatives of the homeless;

(2) Shall consult with the representatives of the homeless, if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless; and

(3) May request that each homeless representative submit a proposal for use of buildings or property at the installation to assist the homeless, including:

(i) A description of the program of such representative to assist the homeless;

(ii) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless;

(iii) Such information as HUD requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination; and

(iv) A certification from the local community that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

(b) *Review of proposals.* HUD shall review the proposal in accordance with the following criteria:

(1) The degree to which the proposal submitted by the representatives meets each of the four criteria listed in paragraph (a)(3) of this section.

(2) The extent to which the proposal fills a gap in the community's continuum of care system.

(3) The extent to which the proposal balances in an appropriate manner the needs for the communities in the vicinity of the installation for economic development and other development with the needs of the homeless.

(4) How the proposal specifies the manner in which buildings and property and resources and assistance on and off the installation will be made available for the homeless.

(c) *Environmental review.* HUD, in cooperation with DoD, shall complete an environmental review under NEPA and other applicable environmental laws and authorities listed in 24 CFR 50.4 before accepting a proposal under this part.

(d) *Notice of decision.* HUD shall notify DOD and the LRA, within 90 days of its receipt of the revised application, of its acceptance of a proposal and shall identify the buildings and property to be disposed of and the entities to which they should be transferred.

#### § 92.45 Disposal of buildings and property.

(a) *Public benefit transfer screening.* After the local redevelopment plan is accepted for planning purposes by the Military Department and accepted by HUD, the Military Department will conduct an official public benefit transfer screening in accordance with the Federal Property Management Regulations (41 CFR 101-47.303-2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent with the uses identified in the redevelopment plan. At the request of the LRA, the Military Department may conduct the official state and local public benefit screening before the completion of the redevelopment plan.

(b) *Environmental review.* The Military Department shall complete an environmental review of the installation in compliance with NEPA and CERCLA prior to disposal of the property. The Military Department may adopt an environmental review completed under § 92.40(c).

(c) *Disposal.* Upon receipt of a notice of approval of an application from HUD under § 92.35(c) and § 92.40(d), DOD shall, without consideration, dispose of the subject buildings and property in compliance with the approved application, either to the LRA or directly to the representative(s) of the homeless.

(d) *LRA's responsibility.* The LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.

(e) *Reversions to the LRA.* If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall take appropriate actions to secure, to the maximum extent practicable the utilization of the building or property by other homeless representatives to assist the homeless. An LRA may not be required to utilize the building or property to assist the homeless.

Dated: August 1, 1995.

**L.M. Bynum,**

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