

§ 174.17 NEPA.

At installations subject to this part, NEPA analysis shall comply with the promulgated NEPA regulations of the Military Department exercising real property accountability for the installation, including any requirements relating to responsibility for funding the analysis. See 32 CFR parts 651 (for the Army), 775 (for the Navy), and 989 (for the Air Force). Nothing in this section shall be interpreted as releasing a Military Department from complying with its own NEPA regulation.

§ 174.18 Historic preservation.

(a) The transfer, lease, or sale of National Register-eligible historic property to a non-Federal entity at installations subject to this part may constitute an “adverse effect” under the regulations implementing the National Historic Preservation Act (36 CFR 800.5(a)(2)(vii)). One way of resolving this adverse effect is to restrict the use that may be made of the property subsequent to its transfer out of Federal ownership or control through the imposition of legally enforceable restrictions or conditions. The Secretary concerned may include such restrictions or conditions (typically a real property interest in the form of a restrictive covenant or preservation easement) in any deed or lease conveying an interest in historic property to a non-Federal entity. Before doing so, the Secretary should first consider whether the historic character of the property can be protected effectively through planning and zoning actions undertaken by units of State or local government; if so, working with such units of State or local government to protect the property through these means is preferable to encumbering the property with such a covenant or easement.

(b) Before including such a covenant or easement in a deed or lease, the Secretary concerned shall consider—

(1) Whether the jurisdiction that encompasses the property authorizes such a covenant or easement; and

(2) Whether the Secretary can give or assign to a third party the responsibility for monitoring and enforcing such a covenant or easement.

PART 175—INDEMNIFICATION OR DEFENSE, OR PROVIDING NOTICE TO THE DEPARTMENT OF DEFENSE, RELATING TO A THIRD-PARTY ENVIRONMENTAL CLAIM

Sec.

175.1 Purpose.

175.2 Applicability.

175.3 Definitions.

175.4 Responsibilities.

175.5 Notice to DoD relating to a third-party claim.

175.6 Filing a request for indemnification or defense.

AUTHORITY: 10 U.S.C. 113, 5 U.S.C. 301, section 330 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, October 23, 1992, 106 Stat. 2371, as amended, and section 1502(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106-398, October 30, 2000, 1014 Stat. 1654A-350, as amended.

SOURCE: 83 FR 34475, July 20, 2018, unless otherwise noted.

§ 175.1 Purpose.

This part describes the process for filing a request for indemnification or defense, or providing proper notice to DoD, of a third-party claim pursuant to section 330 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, October 23, 1992, 106 Stat. 2371, as amended (hereafter “section 330”), or section 1502(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, October 30, 2000, 1014 Stat. 1654A-350, as amended (hereafter “section 1502(e)”). This process identifies the minimum information that a request for indemnification or defense or notice to DoD of a third-party claim for indemnification must include, where that information must be sent, how to make such a request or provide such a notice, the time limits that apply to such a request or notice, and other requirements.

§ 175.2 Applicability.

(a) This part applies to—

(1) The Office of the General Counsel of the Department of Defense and the Military Departments.

(2) Any person or entity making a request for indemnification or defense, or providing notice to DoD, of a third-

§ 175.3

party claim pursuant to section 330 or section 1502(e).

(b) In the case of a property that is subject to an earlier agreement containing different notification requirements, the requirement for notice to the Deputy General Counsel in sections 175.5 and 175.6 are in addition to those notification requirements.

(c) Nothing in this part alters the provisions of § 174.15 of this title.

§ 175.3 Definitions.

Commercial delivery service. Federal Express or United Parcel Service, or other similar service that provides for delivery of packages directly from the sender to the recipient for a fee, but excluding the United States Postal Service (USPS).

Deputy General Counsel. The Deputy General Counsel (Environment, Energy, and Installations), Department of Defense.

Received. Actual physical receipt by the intended recipient.

Request. Any request for indemnification or defense made to the Department of Defense (DoD) by a requester pursuant to section 330 or section 1502(e).

Requester. A person or entity making a request pursuant to section 330 or section 1502(e). When the requester is acting by way of subrogation, the requester is subject to the same requirements and limitations as though it were the subrogator.

Section 330. Section 330 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, October 23, 1992, 106 Stat. 2371, as amended.

Section 1502(e). Section 1502(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, October 30, 2000, 114 Stat. 1654A-350. (This provision applies only to certain portions of the former Naval Ammunition Support Detachment on the island of Vieques, Puerto Rico.)

Third-party claim. A claim from a person or entity (other than the requester) to a requester resulting from a suit, claim, demand or action, liability, judgment, cost or other fee, demanding, seeking, or otherwise requiring that the requester pay an amount, take

32 CFR Ch. I (7-1-25 Edition)

an action, or incur a liability for alleged personal injury or property damage and such payment, action, or liability is eligible for indemnification or defense pursuant to section 330 or section 1502(e). A third-party claim may consist of a notice, letter, order, compliance advisory, compliance agreement, or similar direction from a governmental regulatory authority exercising its authority to regulate the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative if the notice, letter, order, compliance advisory, compliance agreement, or similar notification imposes, directs, or demands requirements for environmental actions or asserts damages related thereto that are eligible for indemnification or defense pursuant to section 330 or section 1502(e).

§ 175.4 Responsibilities.

(a) The General Counsel of the Department of Defense has been delegated the authorities and responsibilities of the Secretary of Defense under section 330 and section 1502(e), with certain limitations as to re-delegation.

(b) The General Counsel has re-delegated the authority and responsibility to adjudicate requests for indemnification or defense and to process notices to DoD of a third-party claim under section 330 and section 1502(e) to the Deputy General Counsel or, when the position of Deputy General Counsel is vacant, the acting Deputy General Counsel. The authority to acknowledge receipt of a request has been delegated to an Associate General Counsel under the Deputy General Counsel.

§ 175.5 Notice to DoD relating to a third-party claim.

(a) *Where to file a notice to DoD of a third-party claim.* (1) Notice to DoD of receipt of a third-party claim, or intent to enter into, agree to, settle, or solicit such a claim, must be received by the Deputy General Counsel at the following address: Deputy General Counsel, Environment, Energy, and Installations, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301-1600, (703-693-4895) or (703-692-2287).

(2) Delivering or otherwise filing a notice of a third-party claim with any other office or location will not constitute proper notice for purposes of this part. Requesters should be aware that all delivery services, and particularly that of the USPS, to the Pentagon can be significantly delayed for security purposes and they should plan accordingly in order to meet any required filing deadlines under this part; use of a commercial delivery service may reduce the delay.

(b) *Individual notices.* A notice to DoD of a third-party claim must be filed separately for each person or entity that is filing the notice. Notices may not be filed jointly for a group, a class, or for multiple persons or entities.

(c) *Means of filing a notice of a third-party claim.* A notice of a third-party claim must be submitted in writing by mail through the USPS or by a commercial delivery service. While the Deputy General Counsel will affirmatively acknowledge receipt of a notice of a third-party claim, it is recommended that a requester, whether using the USPS or a commercial delivery service, mail its notice by registered or certified mail, return receipt requested, or equivalent proof of delivery.

(d) *Information to be included in a notice to DoD of a third-party claim.* A notice to DoD of a third-party claim must include, at a minimum, the following information:

(1) A complete copy of the third-party claim, or, if not presented in writing, a complete summary of the claim, with the names of officers, employees, or agents with knowledge of any information that may be relevant to the claim or any potential defenses. The third-party claim may consist of a summons and complaint or, in the case of a third-party claim from a governmental regulatory authority, a notice, letter, order, compliance advisory, compliance agreement, or similar notification.

(2) A complete copy of all pertinent records, including any deed, sales agreement, bill of sale, lease, license, easement, right-of-way, or transfer document for the facility for which the third-party claim is made.

(3) If the requester is not the first transferee from DoD, a complete copy of all intervening deeds, sales agreements, bills of sale, leases, licenses, easements, rights-of-way, or other transfer documents between the original transfer from DoD and the transfer to the current owner. If the requester is a lender who has made a loan to a person or entity who owns, controls, or leases the facility for which the request for indemnification is made that is secured by said facility, complete copies of all promissory notes, mortgages, deeds of trust, assignments, or other documents evidencing such a loan by the requester.

(4) A complete copy of any insurance policies related to such facility.

(5) If the notice to DoD of a third-party claim is being made by a representative, agent, or attorney in fact or at law, proof of authority to make the notice on behalf of the requester.

(6) Evidence or proof of any claim, loss, or damage alleged to be suffered by the third-party claimant which the requester asserts is covered by section 330 or by section 1502(e).

(7) In the case where a requester intends to enter into, agree to, settle, or solicit a third-party claim, a description or copy of the proposed claim, settlement, or solicitation, as the case may be.

(8) To the extent that any environmental response action has been taken, the documentation supporting such response action and its costs included in the request for indemnification.

(9) To the extent that any environmental response action has been taken, a statement as to whether the remedial action is consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (part 300 of title 42, Code of Federal Regulations) or other applicable regulatory requirements.

(10) A complete copy of any claims made by the requester to any other entity related to the conditions on the property which are the subject of the claim, and any responses or defenses thereto or made to any third-party claims, including correspondence, litigation filings, consultant reports, and other information supporting a claim or defense.

§ 175.6

32 CFR Ch. I (7–1–25 Edition)

(e) *Entry, inspection, and samples.* The requester must provide DoD a right of entry at reasonable times to any facility, establishment, place, or property under the requester's control which is the subject of or associated with the requester's notice of third-party claim and must allow DoD to inspect or obtain samples from that facility, establishment, place, or property.

(f) *Additional information.* The Deputy General Counsel will advise a requester in writing of any additional information that must be provided to defend against a claim. Failure to provide the additional information in a timely manner may result in denial of a request for indemnification or defense for lack of information to adjudicate the claim.

(g) *When to file a notice to DoD of a third-party claim.* (1) A requester must, within 15 days of receiving a third-party claim, file with DoD a notice of such claim in accordance with this part. Failure to timely file such a notice, if it in any way compromises the ability of DoD to defend against such a claim pursuant to section 330(c) or section 1502(e)(3), will result in denial of any subsequent request for indemnification or defense resulting from such a claim. Requesters who take action in compliance with any such third-party claim, or any part of such claim, without first providing DoD with a notice of such claim in accordance with this section do so at their own risk.

(2) A requester must, at least 30 days prior to the earlier of entering into, agreeing to, settling, or soliciting a third-party claim, file a notice to DoD of such intent in accordance with this part. Failure to file such a notice will compromise the ability of DoD to defend against such a claim pursuant to section 330(c) or section 1502(e)(3) and will result in denial of any subsequent request for indemnification or defense resulting from such a claim.

(3) A requester may, if it believes more immediate notice to DoD is desirable or less than all the information required by paragraph (d) of this section is immediately available, contact the Deputy General Counsel using the phone numbers in paragraph (a)(1) of this section. Any such contact does not

constitute compliance with the requirements of paragraph (g)(1) or (2) of this section unless and until the Deputy General Counsel subsequently provides written confirmation that the notice constitutes such compliance. Such written confirmation may be provided by electronic means.

(h) *No implication from DoD action.* Any actions taken by DoD related to defending a claim do not constitute a decision by DoD that the requester is entitled to indemnification or defense.

(i) *Notice also constituting a request for indemnification or defense.* Notice of receipt of a third-party claim may also constitute a request for indemnification or defense if that notice complies with all applicable requirements for a request for indemnification or defense.

§ 175.6 Filing a request for indemnification or defense.

(a) *Where to file a request for indemnification or defense.* (1) In order to notify DoD in accordance with section 330(b)(1) or section 1502(e)(2)(A), a request for indemnification or defense pursuant to section 330 or section 1502(e) must be received by the Deputy General Counsel at the following address: Deputy General Counsel, Environment, Energy, and Installations, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301-1600, (703-693-4895) or (703-692-2287).

(2) Delivering or otherwise filing a request for indemnification or defense with any other office or location will not constitute proper notice of a request for purposes of section 330(b)(1) or section 1502(e)(2)(A). Requesters should be aware that all delivery services, and particularly that of the USPS, to the Pentagon can be significantly delayed for security purposes and they should plan accordingly in order to meet any required filing deadlines under this part; use of a commercial delivery service may reduce the delay.

(b) *When to file a request for indemnification or defense.* A request for indemnification must be received by the Deputy General Counsel within two years after the claim giving rise to the request accrues. A request for defense must be received by the Deputy General Counsel in sufficient time to allow

the United States to provide the requested defense.

(c) *Means of filing a request for indemnification or defense.* A request for indemnification or defense must be submitted in writing by mail through the USPS or by a commercial delivery service. While the Deputy General Counsel will affirmatively acknowledge receipt of a request for indemnification or defense, it is recommended that a requester, whether using the USPS or a commercial delivery service, mail its request by registered or certified mail, return receipt requested, or equivalent proof of delivery.

(d) *Individual requests.* A request for indemnification or defense must be filed separately for each person or entity that is making the request. Requests may not be filed jointly for a group, a class, or for multiple persons or entities.

(e) *Information to be included in a request for indemnification or defense.* A request for indemnification or defense must include, at a minimum, the following information:

(1) A complete copy of the third-party claim, or, if not presented in writing, a complete summary of the claim, with the names of officers, employees, or agents with knowledge of any information that may be relevant to the claim or any potential defenses.

(2) A complete copy of all pertinent records, including any deed, sales agreement, bill of sale, lease, license, easement, right-of-way, or transfer document for the facility for which the request for indemnification or defense is made.

(3) If the requester is not the first transferee from DoD, a complete copy of all intervening deeds, sales agreements, bills of sale, leases, licenses, easements, rights-of-way, or other transfer documents between the original transfer from DoD and the transfer to the current owner. If the requester is a lender who has made a loan to a person or entity who owns, controls, or leases the facility for which the request for indemnification is made that is secured by said facility, complete copies of all promissory notes, mortgages, deeds of trust, assignments, or other documents evidencing such a loan by the requester.

(4) A complete copy of any insurance policies related to such facility.

(5) If the request for indemnification or defense is being made by a representative, agent, or attorney in fact or at law, proof of authority to make the request on behalf of the requester.

(6) Evidence or proof of any claim, loss, or damage covered by section 330 or by section 1502(e).

(7) In the case of a request for defense, a copy of the documents, such as a summons and complaint, or enforcement order, representing the matter against which the United States is being asked to defend.

(8) To the extent that any environmental response action has been taken, the documentation supporting such response action and its costs included in the request for indemnification.

(9) To the extent that any environmental response action has been taken, a statement as to whether the remedial action is consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (part 300 of title 42, Code of Federal Regulations) or other applicable regulatory requirements.

(10) A complete copy of any claims made by the requester to any other entity related to the conditions on the property which are the subject of the claim, and any responses or defenses thereto or made to any third-party claims, including correspondence, litigation filings, consultant reports, and other information supporting a claim or defense.

(f) *Entry, inspection, and samples.* The requester must provide DoD a right of entry at reasonable times to any facility, establishment, place, or property under the requester's control which is the subject of or associated with the requester's request for indemnification or defense and must allow DoD to inspect or obtain samples from that facility, establishment, place, or property.

(g) *Additional information.* The Deputy General Counsel will advise a requester in writing of any additional information that must be provided to adjudicate the request for indemnification or defense. Failure to provide the additional information in a timely manner may result in denial of the request for indemnification or defense.

(h) *Adjudication.* The Deputy General Counsel will adjudicate a request for indemnification or defense and provide the requester with DoD's determination of the validity of the request. Such determination will be in writing and sent to the requester by certified or registered mail.

(i) *Reconsideration.* Any such determination will provide that the requester may ask for reconsideration of the determination. Such reconsideration shall be limited to an assertion by the requester of substantial new evidence or errors in calculation. The requester may seek such reconsideration by filing a request to that effect. A request for reconsideration must be received by the Deputy General Counsel within 30 days after receipt of the determination by the requester. Such a request must be sent to the same address as provided for in paragraph (a)(1) of this section and provide the substantial new evidence or identify the errors in calculation. Such reconsideration will not extend to determinations concerning the law, except as it may have been applied to the facts. A request for reconsideration will be acted on within 30 days from the time it is received. If a request for reconsideration is made, the six month period referred to in section 330(b)(1) and section 1502(e)(2)(A) will commence from the date the requester receives DoD's denial of the request for reconsideration.

(j) *Finality of adjudication.* An adjudication of a request for indemnification constitutes final administrative disposition of such a request, except in the case of a request for reconsideration under paragraph (i) of this section, in which case a denial of the request for reconsideration constitutes final administrative disposition of the request.

PART 176—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

Sec.

176.1 Purpose.

176.5 Definitions.

176.10 Applicability.

176.15 Waivers and extensions of deadlines.

176.20 Overview of the process.

176.25 HUD's negotiations and consultations with the LRA.

176.30 LRA application.

176.35 HUD's review of the application.

176.40 Adverse determinations.

176.45 Disposal of buildings and property.

AUTHORITY: 10 U.S.C. 2687 note.

SOURCE: 62 FR 35346, July 1, 1997, unless otherwise noted.

§ 176.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act, as amended (10 U.S.C. 2687 note), which instituted a new community-based process for addressing the needs of the homeless at base closure and realignment sites. In this process, Local Redevelopment Authorities (LRAs) identify interest from homeless providers in installation property and develop a redevelopment plan for the installation that balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities. The Department of Housing and Urban Development (HUD) reviews the LRA's plan to see that an appropriate balance is achieved. This part also implements the process for identifying interest from State and local entities for property under a public benefit transfer. The LRA is responsible for concurrently identifying interest from homeless providers and State and local entities interested in property under a public benefit transfer.

§ 176.5 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. If no LRA is formed at the local level, and the State is serving in that capacity, the communities in the vicinity of the installation are deemed to be those political jurisdiction(s) (other than the State) in which the installation is located.

Continuum of care system.