

Sarkar, Rumu, CIV, WSO-BRAC

From: MacGregor, Timothy, MAJ, WSO-BRAC
Sent: Monday, June 06, 2005 4:55 PM
To: Sarkar, Rumu, CIV, WSO-BRAC
Subject: 2006 NDAA

Attachments: Pages from Senate FY06 NDAA draft.pdf

Rumu,

Here are a few pages cut and pasted from the Senate's draft 2006 National Defense Authorization Act (NDAA). Look at the highlighted portions of pages 4-6 which note the restrictions on retiring KC-135E and C-130E/H aircraft. There is similar language, at least vis-a-vis the KC-135s, in the current FY05 NDAA.

Based on our discussion this afternoon, here's the salient question: If the NDAA language prohibits retirement of a particular model of aircraft, but an approved BRAC recommendation includes retirement of that same model of aircraft, which takes precedence--NDAA or BRAC?

Two specific examples from the Air Force team include recommendations AF-35 and AF-37. AF-35 discusses retiring 27 C-130Es at Little Rock AFB, AR, while AF-37 notes retiring 8 KC-135Es at Forbes Field, KS.

There are other examples of aircraft retirements□those are on two specific cases.

Thank you for taking a stab at this on e!

Tim



Pages from Senate
FY06 NDAA dr...

Calendar No. 102

109TH CONGRESS
1ST SESSION

S. 1042

[Report No. 109-69]

To authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2005

Mr. WARNER, from the Committee on Armed Services, reported the following original bill; which was read twice and placed on the calendar

A BILL

To authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Defense Au-
3 thORIZATION Act for Fiscal Year 2006”.

4 **SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF**
5 **CONTENTS.**

6 (a) DIVISIONS.—This Act is organized into three divi-
7 sions as follows:

8 (1) Division A—Department of Defense Au-
9 thORIZATIONS.

10 (2) Division B—Military Construction Author-
11 izations.

12 (3) Division C—Department of Energy Na-
13 tional Security Authorizations and Other Authoriza-
14 tions.

15 (b) TABLE OF CONTENTS.—The table of contents for
16 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Organization of Act into divisions; table of contents.
- Sec. 3. Congressional defense committees.

**DIVISION A—DEPARTMENT OF DEFENSE
AUTHORIZATIONS**

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

- Sec. 101. Army.
- Sec. 102. Navy and Marine Corps.
- Sec. 103. Air Force.
- Sec. 104. Defense-wide activities.

Subtitle B—Army Programs

- Sec. 111. Multiyear procurement authority for AH-64D Apache attack heli-
copter block II conversions.

- Sec. 112. Multiyear procurement authority for modernized target acquisition designation/pilot night vision sensors for AH-64D Apache attack helicopters.
- Sec. 113. Multiyear procurement authority for utility helicopters.

Subtitle C—Navy Programs

- Sec. 121. Prohibition on acquisition of next generation destroyer (DD(X)) through a single naval shipyard.
- Sec. 122. Split funding authorization for CVN-78 aircraft carrier.
- Sec. 123. LHA replacement (LHA(R)) ship.
- Sec. 124. Refueling and complex overhaul of the U.S.S. Carl Vinson.

Subtitle D—Air Force Programs

- Sec. 131. Multiyear procurement authority for C-17 aircraft.
- Sec. 132. Prohibition on retirement of KC-135E aircraft.
- Sec. 133. Use of Tanker Replacement Transfer Fund for modernization of aerial refueling tankers.
- Sec. 134. Prohibition on retirement of F-117 aircraft.
- Sec. 135. Prohibition on retirement of C-130E/H tactical airlift aircraft.
- Sec. 136. Procurement of C-130J/KC-130J aircraft after fiscal year 2005.
- Sec. 137. Aircraft for performance of aeromedical evacuations.

Subtitle E—Defense-Wide Programs

- Sec. 151. Advanced SEAL Delivery System.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

- Sec. 201. Authorization of appropriations.
- Sec. 202. Amount for science and technology.

Subtitle B—Program Requirements, Restrictions, and Limitations

- Sec. 211. Contract for the procurement of the Future Combat System (FCS).
- Sec. 212. Joint field experiment on stability and support operations.

Subtitle C—Missile Defense Programs

- Sec. 221. One-year extension of Comptroller General assessments of ballistic missile defense programs.
- Sec. 222. Fielding of ballistic missile defense capabilities.
- Sec. 223. Plans for test and evaluation of operational capability of the Ballistic Missile Defense System.

Subtitle D—High-Performance Defense Manufacturing Technology Research and Development

- Sec. 231. Research and development.
- Sec. 232. Transition of transformational manufacturing processes and technologies to the defense manufacturing base.
- Sec. 233. Manufacturing technology strategies.
- Sec. 234. Report.
- Sec. 235. Definitions.

1 of the U.S.S. Carl Vinson (CVN-70). The amount avail-
2 able under the preceding sentence is the first increment
3 in the incremental funding planned for the nuclear refuel-
4 ing and complex overhaul of the U.S.S. Carl Vinson.

5 (b) CONTRACT AUTHORITY.—The Secretary of the
6 Navy may enter into a contract during fiscal year 2006
7 for the nuclear refueling and complex overhaul of the
8 U.S.S. Carl Vinson.

9 (c) CONDITION FOR OUT-YEAR CONTRACT PAY-
10 MENTS.—A contract entered into under subsection (b)
11 shall provide that any obligation of the United States to
12 make a payment under the contract for a fiscal year after
13 fiscal year 2006 is subject to the availability of appropria-
14 tions for that purpose for such fiscal year.

15 **Subtitle D—Air Force Programs**

16 **SEC. 131. MULTIYEAR PROCUREMENT AUTHORITY FOR C-** 17 **17 AIRCRAFT.**

18 (a) MULTIYEAR PROCUREMENT AUTHORIZED.—Be-
19 ginning with the fiscal year 2006 program year, the Sec-
20 retary of the Air Force may exercise the option on the
21 existing multiyear procurement contract for C-17 aircraft
22 in order to enter into a multiyear contract for the procure-
23 ment of up to 42 additional C-17 aircraft. A contract en-
24 tered into under this subsection shall be entered into in

1 accordance with section 2306b of title 10, United States
2 Code.

3 (b) **REQUIRED CERTIFICATION.**—Prior to the exer-
4 cise of the authority in subsection (a), the Secretary of
5 Defense shall certify to the congressional defense commit-
6 tees that the additional airlift capability to be provided
7 by the C-17 aircraft to be procured under that authority
8 is consistent with the results of the Mobility Capabilities
9 Study to be completed in fiscal year 2005.

10 **SEC. 132. PROHIBITION ON RETIREMENT OF KC-135E AIR-**
11 **CRAFT.**

12 The Secretary of the Air Force may not retire any
13 KC-135E aircraft of the Air Force in fiscal year 2006.

14 **SEC. 133. USE OF TANKER REPLACEMENT TRANSFER FUND**
15 **FOR MODERNIZATION OF AERIAL REFUELING**
16 **TANKERS.**

17 In addition to providing funds for a tanker acquisi-
18 tion program as specified in section 8132 of the Depart-
19 ment of Defense Appropriations Act, 2005 (Public Law
20 108-287; 118 Stat, 1001), funds in the Tanker Replace-
21 ment Transfer Fund established by that section may be
22 used for the modernization of existing aerial refueling
23 tankers if the modernization of such tankers is consistent
24 with the results of the analysis of alternatives for meeting
25 the aerial refueling requirements of the Air Force as re-

767
(read again)
replace w/
stealth tanker

1 quired by section 134(b) of the National Defense Author-
2 ization Act for Fiscal Year 2004 (Public Law 108-136;
3 117 Stat. 1413).

4 **SEC. 134. PROHIBITION ON RETIREMENT OF F-117 AIR-**
5 **CRAFT.**

6 The Secretary of the Air Force may not retire any
7 F-117 Nighthawk stealth attack aircraft of the Air Force
8 in fiscal year 2006.

9 **SEC. 135. PROHIBITION ON RETIREMENT OF C-130E/H TAC-**
10 **TICAL AIRLIFT AIRCRAFT.**

11 The Secretary of the Air Force may not retire any
12 C-130E/H tactical airlift aircraft of the Air Force in fiscal
13 year 2006.

14 **SEC. 136. PROCUREMENT OF C-130J/KC-130J AIRCRAFT**
15 **AFTER FISCAL YEAR 2005.**

16 Any C-130J/KC-130J aircraft procured after fiscal
17 year 2005 (including C-130J/KC-130J aircraft procured
18 through a multiyear contract continuing in force from a
19 fiscal year before fiscal year 2006) shall be procured
20 through a contract under part 15 of the Federal Acquisi-
21 tion Regulation (FAR), relating to acquisition of items by
22 negotiated contract (48 C.F.R. 15.000 et seq.), rather
23 than through a contract under part 12 of the Federal Ac-
24 quisition Regulation, relating to acquisition of commercial
25 items (48 C.F.R. 12.000 et seq.).

108 P.L. 375, *; 118 Stat. 1811;
2004 Enacted H.R. 4200; 108 Enacted H.R. 4200

"(f) Relation to Other Materials.--The final selection criteria specified in this section shall be the only criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

"(g) Relation to Criteria for Earlier Rounds.--Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005."

(c) Conforming Amendments.--The Defense Base Closure and Realignment Act of 1990 is amended--

(1) in section 2912(c)(1)(A), by striking "criteria prepared under section 2913" and inserting "criteria specified in section 2913"; and

(2) in section 2914(a), by striking "criteria prepared by the Secretary under section 2913" and inserting "criteria specified in section 2913".

[*2833] Sec. 2833. REPEAL OF AUTHORITY OF SECRETARY OF DEFENSE TO RECOMMEND THAT INSTALLATIONS BE PLACED IN INACTIVE STATUS.

Section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended by striking subsection (c).

[*2834] Sec. 2834. VOTING REQUIREMENTS FOR DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION TO ADD TO OR OTHERWISE EXPAND CLOSURE AND REALIGNMENT RECOMMENDATIONS MADE BY SECRETARY OF DEFENSE.

Subsection (d) of section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as added by section 3003 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1346) and amended by section 2854 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2728), is amended--

(1) in paragraph (3), by striking "to add" and inserting "to consider additions"; and

(2) by striking paragraph (5) and inserting the following new paragraph:

"(5) Requirements to expand closure or realignment recommendations.-- In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless--

"(A) at least two members of the Commission visit the military installation before the date of the transmittal of the report; and

"(B) the decision of the Commission to make the change to recommend the closure of the military installation, the realignment of the installation, or the expanded realignment of the installation is supported by at least seven members of the Commission."

Subtitle D--Land Conveyances

PART I--ARMY CONVEYANCES

[*2841] Sec. 2841. LAND CONVEYANCE, SUNFLOWER ARMY AMMUNITION PLANT, KANSAS.

(a) Conveyance Authorized.--The Secretary of the Army, in consultation with the Administrator of General Services, may convey to an entity selected by the Board of Commissioners of Johnson County, Kansas (in this section referred to as the "entity" and the "Board", respectively), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 9,065 acres and containing the Sunflower Army Ammunition Plant. The purpose of the conveyance is to facilitate the re-use of the property for economic development and revitalization.

(b) Consideration.--(1) As consideration for the conveyance under subsection (a), the entity shall provide the United States, whether by cash payment, in-kind consideration, or a combination thereof, an amount that is not less than

Subtitle C—Base Closure and Realignment

SEC. 2821. CONSIDERATION OF PUBLIC-ACCESS-ROAD ISSUES RELATED TO BASE CLOSURE, REALIGNMENT, OR PLACEMENT IN INACTIVE STATUS.

Section 2905(b)(2) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended by adding at the end the following new subparagraph:

“(E) If a military installation to be closed, realigned, or placed in an inactive status under this part includes a road used for public access through, into, or around the installation, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering the continued availability of the road for public use after the installation is closed, realigned, or placed in an inactive status.”.

10 USC 2687
note.

SEC. 2822. CONSIDERATION OF SURGE REQUIREMENTS IN 2005 ROUND OF BASE REALIGNMENTS AND CLOSURES.

(a) DETERMINATION OF SURGE REQUIREMENTS.—The Secretary of Defense shall assess the probable threats to national security and, as part of such assessment, determine the potential, prudent, surge requirements to meet those threats.

(b) USE OF DETERMINATION.—The Secretary shall use the surge requirements determination made under subsection (a) in the base realignment and closure process under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as amended by title XXX of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1342).

Subtitle D—Land Conveyances

PART I—ARMY CONVEYANCES

SEC. 2831. TERMINATION OF LEASE AND CONVEYANCE OF ARMY RESERVE FACILITY, CONWAY, ARKANSAS.

(a) TERMINATION OF LEASE.—Upon the completion of the replacement facility authorized for the Army Reserve facility located in Conway, Arkansas, the Secretary of the Army may terminate the 99-year lease between the Secretary and the University of Central Arkansas for the property on which the old facility is located.

(b) CONVEYANCE OF FACILITY.—As part of the termination of the lease under subsection (a), the Secretary may convey, without consideration, to the University of Central Arkansas all right, title, and interest of the United States in and to the Army Reserve facility located on the leased property.

(c) ASSUMPTION OF LIABILITY.—The University of Central Arkansas shall expressly accept any and all liability pertaining to the physical condition of the Army Reserve facility conveyed under subsection (b) and shall hold the United States harmless from any and all liability arising from the facility's physical condition.

DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF 1990

(As amended through FY 05 Authorization Act)

Deleted: 4

SEC. 2901. SHORT TITLE AND PURPOSE

(a) **SHORT TITLE.**--This part may be cited as the "Defense Base Closure and Realignment Act of 1990".

(b) **PURPOSE.**--The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

SEC. 2902. THE COMMISSION

(a) **ESTABLISHMENT.**--There is established an independent commission to be known as the "Defense Base Closure and Realignment Commission".

(b) **DUTIES.**--The Commission shall carry out the duties specified for it in this part.

(c) **APPOINTMENT.**--(1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise and consent of the Senate.

(B) The President shall transmit to the Senate the nominations for appointment to the Commission--

(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with--

(A) the Speaker of the House of Representatives concerning the appointment of two members;

(B) the majority leader of the Senate concerning the appointment of two members;

(C) the minority leader of the House of Representatives concerning the appointment of one member; and

(D) the minority leader of the Senate concerning the appointment of one member.

(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

Executive Schedule under section 5315 of title 5, United States Code.

(i) STAFF.--(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may--

(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

(ii) review the preparation of such a report; or

(iii) approve or disapprove such a report.

(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

(A) There may not be more than 15 persons on the staff at any one time.

(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

(j) OTHER AUTHORITY.--(1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(b) SELECTION CRITERIA.--(1) The Secretary shall, by no later than December 31, 1990, publish in the *Federal Register* and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the *Federal Register* and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the *Federal Register*, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

(c) DOD RECOMMENDATIONS.--(1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 1, 1995, publish in the *Federal Register* and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

(3)(A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning--

determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission--

- (i) makes the determination required by subparagraph (B);
- (ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);
- (iii) publishes a notice of the proposed change in the *Federal Register* not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and
- (iv) conducts public hearings on the proposed change.

(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would--

- (i) add a military installation to the list of military installations recommended by the Secretary for closure;
- (ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or
- (iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(5) The Comptroller General of the United States shall--

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (C); and

(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

(e) REVIEW BY THE PRESIDENT.--(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of

more than three days to a day certain shall be excluded in the computation of a period.

SEC. 2905. IMPLEMENTATION

(a) **IN GENERAL.**--(1) In closing or realigning any military installation under this part, the Secretary may—

(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

(B) provide--

(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation, if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account.

[Amendments to this subsection took effect on December 5, 1991.]

(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

(b) **MANAGEMENT AND DISPOSAL OF PROPERTY.**--(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part--

(A) the authority of the Administrator to utilize excess property under subchapter

(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of--

(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

(III) twenty-four months after the date of approval of the closure or realignment of the installation; or

(IV) ninety days before the date of the closure or realignment of the installation.

(ii) The activities referred to in clause (i) are activities relating to the closure or realignment of an installation to be closed or realigned under this part as follows:

(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed or realigned under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

(E) This paragraph shall not apply to any personal property located at an installation to be closed or realigned under this part if the property--

(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

(ii) 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);

(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out

the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

(iii) A lease under clause (i) may not require rental payments by the United States.

(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

(v) Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the installation, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

(II) firefighting or security-guard functions.

(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of subchapters II and III of chapter 5 of title 40, United States Code, if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

(H)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

(III) the terms of the modification do not compromise, waive, adjust, release, or reduce an right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and

(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 and ending on July 31, 2001.

(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence, see paragraph (7).

(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall--

(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

(ii) notify the Secretary of Defense of the buildings and property that are so identified;

(iii) publish in the *Federal Register* a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which--

(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section

(7)(A) The disposal of buildings and property located at installations approved for closure or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).

(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall--

(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

(iii) In providing assistance under clause (ii), a redevelopment authority shall--

(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure or realignment of the installation.

(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not

Secretary of Defense under subparagraph (K) or (L).

(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

(ii) A redevelopment authority shall include in an application under clause (i) the following:

(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless--

(I) 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 plan for the use and needs of the homeless in such communities;

(II) takes into consideration any economic impact of the homeless assistance

(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall--

(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

(II) consult with the representatives referred to in subclause (I), 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;

(III) request that each such representative submit to that Secretary the items described in clause (ii); and

(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

(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.

subparagraph (K) or (L), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority 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. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure or realignment of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

(O) For purposes of this paragraph, the term "communities in the vicinity of the installation", in the case of an installation, means 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.

(P) For purposes of this paragraph, the term "other interested parties", in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.

(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.--(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that--

(A) the costs of all environmental restoration, waste management, and environmental compliance activities otherwise to be paid by the Secretary with respect to the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

(3) In the case of property or facilities covered by a certification under paragraph (2)(A), the Secretary may pay the recipient of such property or facilities an amount equal to the lesser of—

(A) the amount by which the costs incurred by the recipient of such property or facilities for all environmental restoration, waste, management, and environmental compliance activities with respect to such property or facilities exceed the fair market value of such property or facilities as specified in such certification; or

(B) the amount by which the costs (as determined by the Secretary) that would otherwise have been incurred by the Secretary for such restoration, management, and activities with respect to such property or facilities exceed the fair market value of such property or facilities as so specified

(4) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

(5) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(6) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330, except in the case of releases or threatened releases not disclosed pursuant to paragraph (4).

SEC. 2906. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990

(a) IN GENERAL.--(1) There is hereby established on the books of the Treasury an account to be known as the "Department of Defense Base Closure Account 1990" which shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account--

(A) funds authorized for and appropriated to the Account;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the

military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of--

(I) any failure to carry out military construction projects that were so proposed; and

(II) any expenditures for military construction projects that were not so proposed.

(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part with respect to military installations the date of approval of closure or realignment of which is before January 1, 2005, and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of--

(A) all the funds deposited into and expended from the Account or otherwise expended under this part with respect to such installations; and

(B) any amount remaining in the Account.

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.--(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part the date of approval of closure or realignment of which is before January 1, 2005, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

(3) The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving--

(A) commissary stores; and

(B) real property and facilities for nonappropriated fund instrumentalities.

(4) As used in this subsection:

(A) The term "commissary store funds" means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

(B) The term "nonappropriated funds" means funds received from a nonappropriated fund instrumentality.

(C) The term "nonappropriated fund instrumentality" means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical

Secretary carries out activities under this part using amounts in the Account, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

(B) The report for a fiscal year shall include the following:

(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which finds were obligated for such expenditures.

(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of—

(I) any failure to carry out military construction projects that were so proposed; and

(II) any expenditures for military construction projects that were not so proposed.

(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part with respect to military installations the date of approval of closure or realignment of which is after January 1, 2005, and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

(A) all the funds deposited into and expended from the Account or otherwise expended under this part with respect to such installations; and

(B) any amount remaining in the Account.

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part the date of approval of closure or realignment of which is after January 1, 2005, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary.

(3) The Secretary may use amounts in the reserve account, without further appropriation, for the purpose of acquiring, constructing, and improving—

(A) commissary stores; and

referred to the Committee on Armed Services of the Senate.

(c) DISCHARGE.--If the committee to which a resolution described in subsection (a) is referred has not reported such a resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.--(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.--(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as

SEC. 2910. DEFINITIONS

As used in this part:

(1) The term "Account" means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

(2) The term "congressional defense committees" means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(3) The term "Commission" means the Commission established by section 2902.

(4) The term "military installation" means 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 projects not under the primary jurisdiction or control of the Department of Defense. *[The preceding sentence shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 on that date.]*

(5) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(6) The term "Secretary" means the Secretary of Defense.

(7) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

(8) The term "date of approval", with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires. *[The date of approval of closure of any installation approved for closure before November 30, 1993 shall be deemed to be November 30, 1993.]*

(9) The term "redevelopment authority", in the case of an installation to be closed or realigned under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan. *[The above revision shall take effect as if included in the amendments made by section 2918 of Pub. L. 103-160.]*

(10) The term "redevelopment plan" in the case of an installation to be closed or realigned under this part, means a plan that--

(A) is agreed to by the local redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure or realignment of the installation.

(11) The term "representative of the homeless" has the meaning given such term in section 501(i)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

infrastructure inventory; If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress not later than March 15, 2005. For purposes of selecting military installations for closure or realignment under this part in 2005, no revision of the force-structure plan or infrastructure inventory is authorized after that date.

Deleted: as part of the budget justification documents submitted to Congress for fiscal year 2006.

(b) CERTIFICATION OF NEED FOR FURTHER CLOSURES AND REALIGNMENTS.—

(1) CERTIFICATION REQUIRED.—On the basis of the force-structure plan and infrastructure inventory prepared under subsection (a) and the descriptions and economic analysis prepared under such subsection, the Secretary shall include as part of the submission of the plan and inventory—

(A) a certification regarding whether the need exists for the closure or realignment of additional military installations; and

(B) if such need exists, a certification that the additional round of closures and realignments would result in annual net savings for each of the military departments beginning not later than fiscal year 2011.

(2) EFFECT OF FAILURE TO CERTIFY.—If the Secretary does not include the certifications referred to in paragraph (1), the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

(c) COMPTROLLER GENERAL EVALUATION.—

(1) EVALUATION REQUIRED.—If the certification is provided under subsection (b), the Comptroller General shall prepare an evaluation of the following:

(A) The force-structure plan and infrastructure inventory prepared under subsection (a) and the final selection criteria specified in section 2913, including an evaluation of the accuracy and analytical sufficiency of such plan, inventory, and criteria.

Deleted: criteria prepared under section 2913

(B) The need for the closure or realignment of additional military installations.

(2) SUBMISSION.—The Comptroller General shall submit the evaluation to Congress not later than 60 days after the date on which the force-structure plan and infrastructure inventory are submitted to Congress.

(d) AUTHORIZATION OF ADDITIONAL ROUND; COMMISSION.—

(1) APPOINTMENT OF COMMISSION.—Subject to the certifications required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this part in 2005 by transmitting to the Senate, not later than March 15, 2005, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Closure and Realignment Commission.

(2) EFFECT OF FAILURE TO NOMINATE.—If the President does not transmit to the Senate the nominations for the Commission by March 15, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

(3) MEMBERS.—Notwithstanding section 2902(c)(1), the Commission appointed

(d) PRIORITY GIVEN TO MILITARY VALUE.—The Secretary shall give priority consideration to the military value criteria specified in subsection (b) in the making of recommendations for the closure or realignment of military installations.

(e) EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS.—The selection criteria relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations.

(f) RELATION TO OTHER MATERIALS.—The final selection criteria specified in this section shall be the only criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

(g) RELATION TO CRITERIA FOR EARLIER ROUNDS.—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.

SEC. 2914. SPECIAL PROCEDURES FOR MAKING RECOMMENDATIONS FOR REALIGNMENTS AND CLOSURES FOR 2005 ROUND; COMMISSION CONSIDERATION OF RECOMMENDATIONS.

(a) RECOMMENDATIONS REGARDING CLOSURE OR REALIGNMENT OF MILITARY INSTALLATIONS.—If the Secretary makes the certifications required under section 2912(b), the Secretary shall publish in the Federal Register and transmit to the congressional defense committees and the Commission, not later than May 16, 2005, a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary under section 2912 and the final selection criteria specified in section 2913.

(b) PREPARATION OF RECOMMENDATIONS.—

(1) IN GENERAL.—The Secretary shall comply with paragraphs (2) through (6) of section 2903(c) in preparing and transmitting the recommendations under this section. However, paragraph (6) of section 2903(e) relating to submission of information to Congress shall be deemed to require such submission within 48 hours.

(2) CONSIDERATION OF LOCAL GOVERNMENT VIEWS.—(A) In making recommendations to the Commission in 2005, the Secretary shall consider any notice received from a local government in the vicinity of a military installation that the government would approve of the closure or realignment of the installation,

(B) Notwithstanding the requirement in subparagraph (A), the Secretary shall

Deleted: (a) PREPARATION OF PROPOSED SELECTION CRITERIA.—¶
 (1) IN GENERAL.—Not later than December 31, 2003, the Secretary shall publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.¶
 (2) PUBLIC COMMENT.—The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under this subsection.¶
 (b) MILITARY VALUE AS PRIMARY CONSIDERATION.— The selection criteria prepared by the Secretary shall ensure that military value is the primary consideration in the making of recommendations for the closure or realignment of military installations under this part in 2005. Military value shall include at a minimum the following:¶
 (1) Preservation of training areas suitable for maneuver by ground, naval, or air forces to guarantee future availability of such areas to ensure the readiness of the Armed Forces.¶
 (2) Preservation of military installations in the United States as staging areas for the use of the Armed Forces in homeland defense missions.¶
 (3) Preservation of military installations throughout a diversity of climate and terrain areas in the United States for training purposes.¶
 (4) The impact on joint warfighting, training, and readiness.¶
 (5) Contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.¶
 (c) SPECIAL CONSIDERATIONS.—The selection criteria for military installations shall also address at a minimum the following:¶
 (1) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.¶
 (2) The economic impact on existing communities in the vicinity of military installations.¶
 (3) The ability of both existing and potential receiving communities' infrastructure to support forces, missions, and personnel.¶
 (4) The impact of costs related to potential environmental restoration, waste ... [1]
Deleted: criteria prepared by the Secretary under section 2913

expanded realignment of the installation is supported by at least seven members of the Commission.

(6) **COMPTROLLER GENERAL REPORT.**—The Comptroller General report required by section 2903(d)(5)(B) analyzing the recommendations of the Secretary and the selection process in 2005 shall be transmitted to the congressional defense committees not later than July 1, 2005.

(e) **REVIEW BY THE PRESIDENT.**—

(1) **IN GENERAL.**—Except as provided in this subsection, section 2903(e) shall apply to the review by the President of the recommendations of the Commission under this section, and the actions, if any, of the Commission in response to such review, in 2005. The President shall review the recommendations of the Secretary and the recommendations contained in the report of the Commission under subsection (d) and prepare a report, not later than September '23, 2005, containing the President's approval or disapproval of the Commission's recommendations.

(2) **COMMISSION RECONSIDERATION.**—If the Commission prepares a revised list of recommendations under section 2903(e)(3) in 2005 in response to the review of the President in that year under paragraph (1), the Commission shall transmit the revised list to the President not later than October 20, 2005.

(3) **EFFECT OF FAILURE TO TRANSMIT.**—If the President does not transmit to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) by November 7, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

(4) **EFFECT OF TRANSMITTAL.**—A report of the President under this subsection containing the President's approval of the Commission's recommendations is deemed to be a report under section 2903(e) for purposes of sections 2904 and 2908.

Deleted: (5) **SITE VISIT.**—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not recommend the closure of a military installation not recommended for closure by the Secretary under subsection (a) unless at least two members of the Commission visit the installation before the date of the transmittal of the report.

(e) **FINAL SELECTION CRITERIA.**—Not later than February 16, 2004, the Secretary shall publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005. Such criteria shall be the final criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making such recommendations unless disapproved by an Act of Congress enacted on or before March 15, 2004.

(f) **RELATION TO CRITERIA FOR EARLIER ROUNDS.**— Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.

United State CodeTITLE 10 - ARMED FORCESSubtitle A - General Military LawPART IV - SERVICE, SUPPLY, AND PROCUREMENTCHAPTER 159 - REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY*U.S. Code as of: 01/26/1998***Sec. 2687. Base closures and realignments**

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement -

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies, unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation referred to in such subsection may be taken unless and until -

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives, as part of an annual request for authorization of appropriations to such Committees, of the proposed closing or realignment and submits with the notification an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment; and

(2) a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation referred to in clause (1) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

(d) (1) After the expiration of the period of time provided for in subsection (b) (2) with respect to the closure or realignment of a military installation, funds which would otherwise be available to the Secretary to effect the closure or realignment of that installation may be used by him for such purpose.

(2) Nothing in this section restricts the authority of the

Secretary to obtain architectural and engineering services under section 2807 of this title.

(e) In this section:

(1) The term ''military installation'' means 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, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(2) The term ''civilian personnel'' means direct-hire, permanent civilian employees of the Department of Defense.

(3) The term ''realignment'' includes any action which both reduces and relocates functions and 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 causes.

(4) The term ''legislative day'' means a day on which either House of Congress is in session.

Source

(Added Pub. L. 95-82, title VI, Sec. 612(a), Aug. 1, 1977, 91 Stat. 379; amended Pub. L. 95-356, title VIII, Sec. 805, Sept. 8, 1978, 92 Stat. 586; Pub. L. 97-214, Sec. 10(a)(8), July 12, 1982, 96 Stat. 175; Pub. L. 98-525, title XIV, Sec. 1405(41), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99-145, title XII, Sec. 1202(a), Nov. 8, 1985, 99 Stat. 716; Pub. L. 100-180, div. A, title XII, Sec. 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101-510, div. B, title XXIX, Sec. 2911, Nov. 5, 1990, 104 Stat. 1819; Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(1), Feb. 10, 1996, 110 Stat. 502.)

AMENDMENTS

1996 - Subsec. (b)(1). Pub. L. 104-106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1990 - Subsec. (e)(1). Pub. L. 101-510 inserted ''homeport facility for any ship,'' after ''center,'' and substituted ''under the jurisdiction of the Department of Defense, including any leased facility,'' for ''under the jurisdiction of the Secretary of a military department''.

1987 - Subsec. (e). Pub. L. 100-180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1985 - Pub. L. 99-145 amended section generally, thereby applying the section only to closure of bases with more than 300 civilian personnel authorized to be employed and to realignments involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at bases with more than 300 authorized civilian employees, striking out advance public notice required by the Secretary of Defense or the Secretary of the military department concerned when an installation is a candidate for closure or realignment, requiring that all base

closure or realignment proposals be submitted to the Committee on Armed Services of the Senate and of the House of Representatives as part of the annual budget request and that such proposals contain an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such action, providing that no irrevocable action to implement the closure to realignment could be taken until the expiration of 30 legislative days or 60 calendar days, whichever is longer, and making explicit the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title and to use funds that would otherwise be available to effect the closure or realignment after expiration of the notice period.

1984 - Subsec. (a)(2). Pub. L. 98-525, Sec. 1405(41)(A), substituted '1,000' for 'one thousand'.

Subsec. (b)(2). Pub. L. 98-525, Sec. 1405(41)(B), inserted '(42 U.S.C. 4321 et seq.)'.

Subsec. (b)(4). Pub. L. 98-525, Sec. 1405(41)(C), substituted '60' for 'sixty'.

Subsec. (d)(1)(B). Pub. L. 98-525, Sec. 1405(41)(D), substituted '300' for 'three hundred'.

1982 - Subsec. (d)(1). Pub. L. 97-214 substituted 'a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department' for 'any camp, post, station, base, yard, or other facility under the authority of the Department of Defense'.

1978 - Subsec. (d)(1)(B). Pub. L. 95-356 substituted 'three hundred' for 'five hundred'.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1202(b) of Pub. L. 99-145 provided that: 'The amendment made by subsection (a) (amending this section) shall apply to closures and realignments completed on or after the date of the enactment of this Act (Nov. 8, 1985), except that any action taken to effect or implement any closure or realignment for which a public announcement was made pursuant to section 2687(b)(1) of title 10, United States Code, after April 1, 1985, and before the date of enactment of this Act shall be subject to the provisions of section 2687 of such title as in effect on the day before such date of enactment.'

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97-214, set out as an Effective Date note under section 2801 of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-526, Sec. 1, Oct. 24, 1988, 102 Stat. 2623, provided that: 'This Act (amending sections 1095a, 2324, 2683, and 4415 of this title, enacting provisions set out as notes under this section and sections 154 and 2306 of this title, and amending provisions set out as notes under section 2324 of this title) may be cited as the 'Defense Authorization Amendments and Base Closure and Realignment Act'.'

EFFECTIVE DATE OF 1994 AMENDMENTS BY SECTION 2813(D)(1) AND (2) OF

PUB. L. 103-337

Pub. L. 103-337, div. B, title XXVIII, Sec. 2813(d)(3), Oct. 5, 1994, 108 Stat. 3055, provided that: 'The amendments made by paragraphs (1) and (2) (amending section 209(10) of Pub. L. 100-526 and section 2910(9) of Pub. L. 101-510, set out below) shall take effect as if included in the amendments made by section 2918 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law

103-160; 107 Stat. 1927).''

EFFECTIVE DATE OF 1991 AMENDMENTS BY SECTION 344 OF PUB. L. 102-190

Pub. L. 102-190, div. A, title III, Sec. 344(c), Dec. 5, 1991, 105 Stat. 1346, provided that: ''The amendments made by this section (amending provisions set out as notes below) shall apply with regard to the transfer or disposal of any real property or facility pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526, set out below) or the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of div. B of Pub. L. 101-510, set out below) occurring on or after the date of the enactment of this Act (Dec. 5, 1991).''

REPORT ON CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 105-85, div. B, title XXVIII, Sec. 2824, Nov. 18, 1997, 111 Stat. 1998, provided that:

''(a) Report. - (1) The Secretary of Defense shall prepare and submit to the congressional defense committees (Committees on Armed Services and Appropriations of Senate and Committees on National Security and Appropriations of House of Representatives) a report on the costs and savings attributable to the rounds of base closures and realignments conducted under the base closure laws and on the need, if any, for additional rounds of base closures and realignments.

''(2) For purposes of this section, the term 'base closure laws' means -

''(A) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note); and

''(B) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

''(b) Elements. - The report under subsection (a) shall include the following:

''(1) A statement, using data consistent with budget data, of the actual costs and savings (to the extent available for prior fiscal years) and the estimated costs and savings (in the case of future fiscal years) attributable to the closure and realignment of military installations as a result of the base closure laws.

''(2) A comparison, set forth by base closure round, of the actual costs and savings stated under paragraph (1) to the estimates of costs and savings submitted to the Defense Base Closure and Realignment Commission as part of the base closure process.

''(3) A comparison, set forth by base closure round, of the actual costs and savings stated under paragraph (1) to the annual estimates of costs and savings previously submitted to Congress.

''(4) A list of each military installation at which there is authorized to be employed 300 or more civilian personnel, set forth by Armed Force.

''(5) An estimate of current excess capacity at military installations, set forth -

''(A) as a percentage of the total capacity of the military installations of the Armed Forces with respect to all military installations of the Armed Forces;

''(B) as a percentage of the total capacity of the military installations of each Armed Force with respect to the military installations of such Armed Force; and

''(C) as a percentage of the total capacity of a type of military installations with respect to military installations of such type.

''(6) An assessment of the effect of the previous base closure rounds on military capabilities and the ability of the Armed Forces to fulfill the National Military Strategy.

''(7) A description of the types of military installations that would be recommended for closure or realignment in the event of one or more additional base closure rounds, set forth by Armed Force.

''(8) The criteria to be used by the Secretary in evaluating military installations for closure or realignment in such event.

''(9) The methodologies to be used by the Secretary in identifying military installations for closure or realignment in such event.

''(10) An estimate of the costs and savings that the Secretary believes will be achieved as a result of the closure or realignment of military installations in such event, set forth by Armed Force and by year.

''(11) An assessment of whether the costs and estimated savings from one or more future rounds of base closures and realignments, currently unauthorized, are already contained in the current Future Years Defense Plan, and, if not, whether the Secretary will recommend modifications in future defense spending in order to accommodate such costs and savings.

''(c) Method of Presenting Information. - The statement and comparison required by paragraphs (1) and (2) of subsection (b) shall be set forth by Armed Force, type of facility, and fiscal year, and include the following:

''(1) Operation and maintenance costs, including costs associated with expanded operations and support, maintenance of property, administrative support, and allowances for housing at military installations to which functions are transferred as a result of the closure or realignment of other installations.

''(2) Military construction costs, including costs associated with rehabilitating, expanding, and constructing facilities to receive personnel and equipment that are transferred to military installations as a result of the closure or realignment of other installations.

''(3) Environmental cleanup costs, including costs associated with assessments and restoration.

''(4) Economic assistance costs, including -

''(A) expenditures on Department of Defense demonstration projects relating to economic assistance;

''(B) expenditures by the Office of Economic Adjustment; and

''(C) to the extent available, expenditures by the Economic Development Administration, the Federal Aviation Administration, and the Department of Labor relating to economic assistance.

''(5) To the extent information is available, unemployment compensation costs, early retirement benefits (including benefits paid under section 5597 of title 5, United States Code), and worker retraining expenses under the Priority Placement Program, the Job Training Partnership Act (29 U.S.C. 1501 et seq.), and any other federally funded job training program.

''(6) Costs associated with military health care.

''(7) Savings attributable to changes in military force structure.

''(8) Savings due to lower support costs with respect to military installations that are closed or realigned.

''(d) Deadline. - The Secretary shall submit the report under subsection (a) not later than the date on which the President submits to Congress the budget for fiscal year 2000 under section

1105(a) of title 31, United States Code.

''(e) Review. - The Congressional Budget Office and the Comptroller General shall conduct a review of the report prepared under subsection (a).

''(f) Prohibition on Use of Funds. - Except as necessary to prepare the report required under subsection (a), no funds authorized to be appropriated or otherwise made available to the Department of Defense by this Act or any other Act may be used for the purposes of planning for, or collecting data in anticipation of, an authorization providing for procedures under which the closure and realignment of military installations may be accomplished, until the later of -

''(1) the date on which the Secretary submits the report required by subsection (a); and

''(2) the date on which the Congressional Budget Office and the Comptroller General complete a review of the report under subsection (e).

''(g) Sense of Congress. - It is the sense of the Congress that -

''(1) the Secretary should develop a system having the capacity to quantify the actual costs and savings attributable to the closure and realignment of military installations pursuant to the base closure process; and

''(2) the Secretary should develop the system in expedient fashion, so that the system may be used to quantify costs and savings attributable to the 1995 base closure round.''

RETENTION OF CIVILIAN EMPLOYEE POSITIONS AT MILITARY TRAINING BASES
TRANSFERRED TO NATIONAL GUARD

Pub. L. 104-201, div. A, title XVI, Sec. 1602, Sept. 23, 1996, 110 Stat. 2734, provided that:

''(a) Retention of Employee Positions. - In the case of a military training installation described in subsection (b), the Secretary of Defense shall retain civilian employee positions of the Department of Defense at the installation after transfer to the National Guard to facilitate active and reserve component training at the installation. The Secretary shall determine the extent to which positions at the installation are to be retained as positions of the Department of Defense in consultation with the Adjutant General of the National Guard of the State in which the installation is located.

''(b) Military Training Installations Affected. - This section applies with respect to each military training installation that -

''(1) was approved for closure in 1995 under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note);

''(2) is scheduled for transfer to National Guard operation and control; and

''(3) will continue to be used, after such transfer, to provide training support to active and reserve components of the Armed Forces.

''(c) Maximum Positions Retained. - The number of civilian employee positions retained at an installation under this section may not exceed 20 percent of the Federal civilian workforce employed at the installation as of September 8, 1995.

''(d) Removal of Position. - The requirement to maintain a civilian employee position at an installation under this section terminates upon the later of the following:

''(1) The date of the departure or retirement from that position by the civilian employee initially employed or retained in the position as a result of this section.

''(2) The date on which the Secretary certifies to Congress

DCN: 12058

that the position is no longer required to ensure that effective support is provided at the installation for active and reserve component training.'

USE OF FUNDS TO IMPROVE LEASED PROPERTY

Section 2837(b) of Pub. L. 104-106 provided that:

'Notwithstanding any other provision of law, a department or agency of the Federal Government that enters into a lease of property under section 2905(b)(4)(C) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as amended by subsection (a), may improve the leased property using funds appropriated or otherwise available to the department or agency for such purpose.'

REGULATIONS TO CARRY OUT SECTION 204(E) OF PUB. L. 100-526 AND SECTION 2905(F) OF PUB. L. 101-510

Section 2840(c) of Pub. L. 104-106 provided that: 'Not later than nine months after the date of the enactment of this Act (Feb. 10, 1996), the Secretary of Defense shall prescribe any regulations necessary to carry out subsection (e) of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note), as added by subsection (a), and subsection (f) of section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as added by subsection (b).'

PROHIBITION ON OBLIGATION OF FUNDS FOR PROJECTS ON INSTALLATIONS CITED FOR REALIGNMENT

Pub. L. 104-6, title I, Sec. 112, Apr. 10, 1995, 109 Stat. 82, provided that: 'None of the funds made available to the Department of Defense for any fiscal year for military construction or family housing may be obligated to initiate construction projects upon enactment of this Act (Apr. 10, 1995) for any project on an installation that -

'(1) was included in the closure and realignment recommendations submitted by the Secretary of Defense to the Base Closure and Realignment Commission on February 28, 1995, unless removed by the Base Closure and Realignment Commission, or

'(2) is included in the closure and realignment recommendation as submitted to Congress in 1995 in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510) (part A of title XXIX of div. B of Pub. L. 101-510, set out below):

Provided, That the prohibition on obligation of funds for projects located on an installation cited for realignment are only to be in effect if the function or activity with which the project is associated will be transferred from the installation as a result of the realignment: Provided further, That this provision will remain in effect unless the Congress enacts a Joint Resolution of Disapproval in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510).'

APPLICABILITY TO INSTALLATIONS APPROVED FOR CLOSURE BEFORE ENACTMENT OF PUB. L. 103-421

Pub. L. 103-421, Sec. 2(e), Oct. 25, 1994, 108 Stat. 4352, as amended by Pub. L. 104-106, div. A, title XV, Sec. 1505(f), Feb. 10, 1996, 110 Stat. 515, provided that:

'(1)(A) Notwithstanding any provision of the 1988 base closure Act or the 1990 base closure Act, as such provision was in effect on the day before the date of the enactment of this Act (Oct. 25, 1994), and subject to subparagraphs (B) and (C), the use to assist the homeless of building and property at military installations approved for closure under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before such date shall be

determined in accordance with the provisions of paragraph (7) of section 2905(b) of the 1990 base closure Act, as amended by subsection (a), in lieu of the provisions of the 1988 base closure Act or the 1990 base closure Act that would otherwise apply to the installations.

''(B)(i) The provisions of such paragraph (7) shall apply to an installation referred to in subparagraph (A) only if the redevelopment authority for the installation submits a request to the Secretary of Defense not later than 60 days after the date of the enactment of this Act.

''(ii) In the case of an installation for which no redevelopment authority exists on the date of the enactment of this Act, the chief executive officer of the State in which the installation is located shall submit the request referred to in clause (i) and act as the redevelopment authority for the installation.

''(C) The provisions of such paragraph (7) shall not apply to any buildings or property at an installation referred to in subparagraph (A) for which the redevelopment authority submits a request referred to in subparagraph (B) within the time specified in such subparagraph (B) if the buildings or property, as the case may be, have been transferred or leased for use to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act.

''(2) For purposes of the application of such paragraph (7) to the buildings and property at an installation, the date on which the Secretary receives a request with respect to the installation under paragraph (1) shall be treated as the date on which the Secretary of Defense completes the final determination referred to in subparagraph (B) of such paragraph (7).

''(3) Upon receipt under paragraph (1)(B) of a timely request with respect to an installation, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information describing the redevelopment authority for the installation.

''(4)(A) The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall not, during the 60-day period beginning on the date of the enactment of this Act (Oct. 25, 1994), carry out with respect to any military installation approved for closure under the 1988 base closure Act or the 1990 base closure Act before such date any action required of such Secretaries under the 1988 base closure Act or the 1990 base closure Act, as the case may be, or under section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

''(B)(i) Upon receipt under paragraph (1)(A) of a timely request with respect to an installation, the Secretary of Defense shall notify the Secretary of Housing and Urban Development and the Secretary of Health and Human Services that the disposal of buildings and property at the installation shall be determined under such paragraph (7) in accordance with this subsection.

''(ii) Upon receipt of a notice with respect to an installation under this subparagraph, the requirements, if any, of the Secretary of Housing and Urban Development and the Secretary of Health and Human Services with respect to the installation under the provisions of law referred to in subparagraph (A) shall terminate.

''(iii) Upon receipt of a notice with respect to an installation under this subparagraph, the Secretary of Health and Human Services shall notify each representative of the homeless that submitted to that Secretary an application to use buildings or property at the

installation to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, that the use of buildings and property at the installation to assist the homeless shall be determined under such paragraph (7) in accordance with this subsection.

''(5) In preparing a redevelopment plan for buildings and property at an installation covered by such paragraph (7) by reason of this subsection, the redevelopment authority concerned shall -

''(A) consider and address specifically any applications for use of such buildings and property to assist the homeless that were received by the Secretary of Health and Human Services under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act (Oct. 25, 1994) and are pending with that Secretary on that date; and

''(B) in the case of any application by representatives of the homeless that was approved by the Secretary of Health and Human Services before the date of enactment of this Act, ensure that the plan adequately addresses the needs of the homeless identified in the application by providing such representatives of the homeless with -

''(i) properties, on or off the installation, that are substantially equivalent to the properties covered by the application;

''(ii) sufficient funding to secure such substantially equivalent properties;

''(iii) services and activities that meet the needs identified in the application; or

''(iv) a combination of the properties, funding, and services and activities described in clauses (i), (ii), and (iii).

''(6) In the case of an installation to which the provisions of such paragraph (7) apply by reason of this subsection, the date specified by the redevelopment authority for the installation under subparagraph (D) of such paragraph (7) shall be not less than 1 month and not more than 6 months after the date of the submittal of the request with respect to the installation under paragraph (1) (B).

''(7) For purposes of this subsection:

''(A) The term '1988 base closure Act' means title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

''(B) The term '1990 base closure Act' means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).''

PREFERENCE FOR LOCAL RESIDENTS

Pub. L. 103-337, div. A, title VIII, Sec. 817, Oct. 5, 1994, 108 Stat. 2820, provided that:

''(a) Preference Allowed. - In entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law, the Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required

to undertake.

''(b) Definition. - In this section, the term 'base closure law' means the following:

''(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

''(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

''(c) Applicability. - Any preference given under subsection (a) shall apply only with respect to contracts entered into after the date of the enactment of this Act (Oct. 5, 1994).

''(d) Termination. - This section shall cease to be effective on September 30, 1997.''

GOVERNMENT RENTAL OF FACILITIES LOCATED ON CLOSED MILITARY INSTALLATIONS

Pub. L. 103-337, div. B, title XXVIII, Sec. 2814, Oct. 5, 1994, 108 Stat. 3056, provided that:

''(a) Authorization To Rent Base Closure Properties. - To promote the rapid conversion of military installations that are closed pursuant to a base closure law, the Administrator of the General Services may give priority consideration, when leasing space in accordance with the Public Buildings Act of 1959 (40 U.S.C. 601 et seq.) and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), to facilities of such an installation that have been acquired by a non-Federal entity.

''(b) Base Closure Law Defined. - For purposes of this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).''

REPORT OF EFFECT OF BASE CLOSURES ON FUTURE MOBILIZATION OPTIONS

Pub. L. 103-337, div. B, title XXVIII, Sec. 2815, Oct. 5, 1994, 108 Stat. 3056, provided that:

''(a) Report Required. - The Secretary of Defense shall prepare a report evaluating the effect of base closures and realignments conducted since January 1, 1987, on the ability of the Armed Forces to remobilize to the end strength levels authorized for fiscal year 1987 by sections 401 (100 Stat. 3859), 403 (enacting provisions set out as a note under section 521 of this title), 411 (amending section 115 of this title and enacting provisions set out as a note under section 12001 of this title), 412 (enacting section 686 (now 12318) of this title), and 421 (100 Stat. 3863) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661; 100 Stat. 3859). The report shall identify those military construction projects, if any, that would be necessary to facilitate such remobilization and any defense assets disposed of under a base closure or realignment, such as air space, that would be difficult to reacquire in the event of such remobilization.

''(b) Time for Submission. - Not later than January 31, 1996, the Secretary shall submit to the congressional defense committees the report required by this section.''

CONGRESSIONAL FINDINGS WITH RESPECT TO BASE CLOSURE COMMUNITY ASSISTANCE

Pub. L. 103-160, div. B, title XXIX, Sec. 2901, Nov. 30, 1993, 107 Stat. 1909, provided that: ''Congress makes the following findings:

''(1) The closure and realignment of military installations within the United States is a necessary consequence of the end of the Cold War and of changed United States national security requirements.

''(2) A military installation is a significant source of employment for many communities, and the closure or realignment of an installation may cause economic hardship for such communities.

''(3) It is in the interest of the United States that the Federal Government facilitate the economic recovery of communities that experience adverse economic circumstances as a result of the closure or realignment of a military installation.

''(4) It is in the interest of the United States that the Federal Government assist communities that experience adverse economic circumstances as a result of the closure of military installations by working with such communities to identify and implement means of reutilizing or redeveloping such installations in a beneficial manner or of otherwise revitalizing such communities and the economies of such communities.

''(5) The Federal Government may best identify and implement such means by requiring that the head of each department or agency of the Federal Government having jurisdiction over a matter arising out of the closure of a military installation under a base closure law, or the reutilization and redevelopment of such an installation, designate for each installation to be closed an individual in such department or agency who shall provide information and assistance to the transition coordinator for the installation designated under section 2915 (set out below) on the assistance, programs, or other activities of such department or agency with respect to the closure or reutilization and redevelopment of the installation.

''(6) The Federal Government may also provide such assistance by accelerating environmental restoration at military installations to be closed, and by closing such installations, in a manner that best ensures the beneficial reutilization and redevelopment of such installations by such communities.

''(7) The Federal Government may best contribute to such reutilization and redevelopment by making available real and personal property at military installations to be closed to communities affected by such closures on a timely basis, and, if appropriate, at less than fair market value.''

CONSIDERATION OF ECONOMIC NEEDS AND COOPERATION WITH STATE AND LOCAL AUTHORITIES IN DISPOSING OF PROPERTY

Pub. L. 103-160, div. B, title XXIX, Sec. 2903(c), (d), Nov. 30, 1993, 107 Stat. 1915, provided that:

''(c) Consideration of Economic Needs. - In order to maximize the local and regional benefit from the reutilization and redevelopment of military installations that are closed, or approved for closure, pursuant to the operation of a base closure law, the Secretary of Defense shall consider locally and regionally delineated economic development needs and priorities into the process by which the Secretary disposes of real property and personal property as part of the closure of a military installation under a base closure law. In determining such needs and priorities, the Secretary shall take into account the redevelopment plan developed for the military installation involved. The Secretary shall ensure that the needs of the homeless in the communities affected by the closure of such installations are taken into consideration in the redevelopment plan with respect to such installations.

''(d) Cooperation. - The Secretary of Defense shall cooperate

with the State in which a military installation referred to in subsection (c) is located, with the redevelopment authority with respect to the installation, and with local governments and other interested persons in communities located near the installation in implementing the entire process of disposal of the real property and personal property at the installation.'

REGULATIONS TO CARRY OUT SECTION 204 OF PUB. L. 100-526 AND SECTION 2905 OF PUB. L. 101-510

Pub. L. 103-160, div. B, title XXIX, Sec. 2908(c), Nov. 30, 1993, 107 Stat. 1924, provided that: 'Not later than nine months after the date of the enactment of this Act (Nov. 30, 1993), the Secretary of Defense, in consultation with the Administrator of the Environmental Protection Agency, shall prescribe any regulations necessary to carry out subsection (d) of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note), as added by subsection (a), and subsection (e) of section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as added by subsection (b).'

COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS

Pub. L. 103-160, div. B, title XXIX, Sec. 2911, Nov. 30, 1993, 107 Stat. 1924, provided that: 'Not later than 12 months after the date of the submittal to the Secretary of Defense of a redevelopment plan for an installation approved for closure under a base closure law, the Secretary of Defense shall, to the extent practicable, complete any environmental impact analyses required with respect to the installation, and with respect to the redevelopment plan, if any, for the installation, pursuant to the base closure law under which the installation is closed, and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq).'

PREFERENCE FOR LOCAL AND SMALL BUSINESSES IN CONTRACTING

Pub. L. 103-160, div. B, title XXIX, Sec. 2912, Nov. 30, 1993, 107 Stat. 1925, as amended by Pub. L. 103-337, div. A, title X, Sec. 1070(b)(14), Oct. 5, 1994, 108 Stat. 2857, provided that:

'(a) Preference Required. - In entering into contracts with private entities as part of the closure or realignment of a military installation under a base closure law, the Secretary of Defense shall give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business concerns and small disadvantaged business concerns. Contracts for which this preference shall be given shall include contracts to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

'(b) Definitions. - In this section:

'(1) The term 'small business concern' means a business concern meeting the requirements of section 3 of the Small Business Act (15 U.S.C. 632).

'(2) The term 'small disadvantaged business concern' means the business concerns referred to in section 8(d)(1) of such Act (15 U.S.C. 637(d)(1)).

'(3) The term 'base closure law' includes section 2687 of title 10, United States Code.'

TRANSITION COORDINATORS FOR ASSISTANCE TO COMMUNITIES AFFECTED BY CLOSURE OF INSTALLATIONS

Pub. L. 103-160, div. B, title XXIX, Sec. 2915, Nov. 30, 1993, 107 Stat. 1926, provided that:

'(a) In General. - The Secretary of Defense shall designate a

transition coordinator for each military installation to be closed under a base closure law. The transition coordinator shall carry out the activities for such coordinator set forth in subsection (c).

''(b) Timing of Designation. - A transition coordinator shall be designated for an installation under subsection (a) as follows:

''(1) Not later than 15 days after the date of approval of closure of the installation.

''(2) In the case of installations approved for closure under a base closure law before the date of the enactment of this Act (Nov. 30, 1993), not later than 15 days after such date of enactment.

''(c) Responsibilities. - A transition coordinator designated with respect to an installation shall -

''(1) encourage, after consultation with officials of Federal and State departments and agencies concerned, the development of strategies for the expeditious environmental cleanup and restoration of the installation by the Department of Defense;

''(2) assist the Secretary of the military department concerned in designating real property at the installation that has the potential for rapid and beneficial reuse or redevelopment in accordance with the redevelopment plan for the installation;

''(3) assist such Secretary in identifying strategies for accelerating completion of environmental cleanup and restoration of the real property designated under paragraph (2);

''(4) assist such Secretary in developing plans for the closure of the installation that take into account the goals set forth in the redevelopment plan for the installation;

''(5) assist such Secretary in developing plans for ensuring that, to the maximum extent practicable, the Department of Defense carries out any activities at the installation after the closure of the installation in a manner that takes into account, and supports, the redevelopment plan for the installation;

''(6) assist the Secretary of Defense in making determinations with respect to the transferability of property at the installation under section 204(b)(5) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note), as added by section 2904(a) of this Act, and under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as added by section 2904(b) of this Act, as the case may be;

''(7) assist the local redevelopment authority with respect to the installation in identifying real property or personal property at the installation that may have significant potential for reuse or redevelopment in accordance with the redevelopment plan for the installation;

''(8) assist the Office of Economic Adjustment of the Department of Defense and other departments and agencies of the Federal Government in coordinating the provision of assistance under transition assistance and transition mitigation programs with community redevelopment activities with respect to the installation;

''(9) assist the Secretary of the military department concerned in identifying property located at the installation that may be leased in a manner consistent with the redevelopment plan for the installation; and

''(10) assist the Secretary of Defense in identifying real property or personal property at the installation that may be utilized to meet the needs of the homeless by consulting with the

Secretary of Housing and Urban Development and the local lead agency of the homeless, if any, referred to in section 210(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11320(b)) for the State in which the installation is located.''

DEFINITIONS FOR SUBTITLE A OF TITLE XXIX OF PUB. L. 103-160

Pub. L. 103-160, div. B, title XXIX, Sec. 2918(a), Nov. 30, 1993, 107 Stat. 1927, provided that: 'In this subtitle (subtitle A (Sec. 2901 to 2918) of title XXIX of div. B of Pub. L. 103-160, amending sections 2391 and 2667 of this title, enacting provisions set out as notes under this section and section 9620 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under this section):

'(1) The term 'base closure law' means the following:

'(A) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

'(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

'(2) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under the applicable base closure law expires.

'(3) The term 'redevelopment authority', in the case of an installation to be closed under a base closure law, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

'(4) The term 'redevelopment plan', in the case of an installation to be closed under a base closure law, means a plan that -

'(A) is agreed to by the redevelopment authority with respect to the installation; and

'(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.'

LIMITATION ON EXPENDITURES FROM DEFENSE BASE CLOSURE ACCOUNT 1990

FOR MILITARY CONSTRUCTION IN SUPPORT OF TRANSFERS OF FUNCTIONS

Pub. L. 103-160, div. B, title XXIX, Sec. 2922, Nov. 30, 1993, 107 Stat. 1930, as amended by Pub. L. 104-106, div. A, title XV, Sec. 1502(c)(1), Feb. 10, 1996, 110 Stat. 506, provided that:

'(a) Limitation. - If the Secretary of Defense recommends to the Defense Base Closure and Realignment Commission pursuant to section 2903(c) of the 1990 base closure Act (set out below) that an installation be closed or realigned, the Secretary identifies in documents submitted to the Commission one or more installations to which a function performed at the recommended installation would be transferred, and the recommended installation is closed or realigned pursuant to such Act, then, except as provided in subsection (b), funds in the Defense Base Closure Account 1990 may not be used for military construction in support of the transfer of that function to any installation other than an installation so identified in such documents.

'(b) Exception. - The limitation in subsection (a) ceases to be applicable to military construction in support of the transfer of a function to an installation on the 60th day following the date on

which the Secretary submits to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a notification of the proposed transfer that -

''(1) identifies the installation to which the function is to be transferred; and

''(2) includes the justification for the transfer to such installation.

''(c) Definitions. - In this section:

''(1) The term '1990 base closure Act' means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

''(2) The term 'Defense Base Closure Account 1990' means the account established under section 2906 of the 1990 base closure Act (set out below).''

SENSE OF CONGRESS ON DEVELOPMENT OF BASE CLOSURE CRITERIA

Pub. L. 103-160, div. B, title XXIX, Sec. 2925, Nov. 30, 1993, 107 Stat. 1932, as amended by Pub. L. 104-106, div. A, title XV, Sec. 1502(c)(1), Feb. 10, 1996, 110 Stat. 506, provided that:

''(a) Sense of Congress. - It is the sense of Congress that the Secretary of Defense consider, in developing in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510; 10 U.S.C. 2687 note) amended criteria, whether such criteria should include the direct costs of such closures and realignments to other Federal departments and agencies.

''(b) Report on Amendment. - (1) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on any amended criteria developed by the Secretary under section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 after the date of the enactment of this Act (Nov. 30, 1993). Such report shall include a discussion of the amended criteria and include a justification for any decision not to propose a criterion regarding the direct costs of base closures and realignments to other Federal agencies and departments.

''(2) The Secretary shall submit the report upon publication of the amended criteria in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990.''

MILITARY BASE CLOSURE REPORT

Pub. L. 102-581, title I, Sec. 107(d), Oct. 31, 1992, 106 Stat. 4879, provided that: ''Within 30 days after the date on which the Secretary of Defense recommends a list of military bases for closure or realignment pursuant to section 2903(c) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510; (10) U.S.C. 2687 note), the Administrator of the Federal Aviation Administration shall submit to Congress and the Defense Base Closure and Realignment Commission a report on the effects of all those recommendations involving military airbases, including but not limited to, the effect of the proposed closures or realignments on civilian airports and airways in the local community and region; potential modifications and costs necessary to convert such bases to civilian aviation use; and in the case of air traffic control or radar coverage currently provided by the Department of Defense, potential installations or adjustments of equipment and costs necessary for the Federal Aviation Administration to maintain existing levels of service for the local community and region.''

INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY

Pub. L. 102-484, div. A, title III, Sec. 330, Oct. 23, 1992, 106 Stat. 2371, as amended by Pub. L. 103-160, div. A, title X, Sec. 1002, Nov. 30, 1993, 107 Stat. 1745, provided that:

''(a) In General. - (1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

''(2) The persons and entities described in this paragraph are the following:

''(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

''(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

''(C) Any other person or entity that acquires such ownership or control.

''(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

''(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

''(b) Conditions. - No indemnification may be afforded under this section unless the person or entity making a claim for indemnification -

''(1) notifies the Department of Defense in writing within two years after such claim accrues or begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Department of Defense;

''(2) furnishes to the Department of Defense copies of pertinent papers the entity receives;

''(3) furnishes evidence or proof of any claim, loss, or damage covered by this section; and

''(4) provides, upon request by the Department of Defense, access to the records and personnel of the entity for purposes of defending or settling the claim or action.

''(c) Authority of Secretary of Defense. - (1) In any case in which the Secretary of Defense determines that the Department of Defense may be required to make indemnification payments to a person under this section for any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage referred to in subsection (a)(1), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

''(2) In any case described in paragraph (1), if the person to whom the Department of Defense may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this section.

''(d) Accrual of Action. - For purposes of subsection (b)(1), the date on which a claim accrues is the date on which the plaintiff knew (or reasonably should have known) that the personal injury or property damage referred to in subsection (a) was caused or contributed to by the release or threatened release of a hazardous

DCN: 12058

substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) described in subsection (a) (1).

''(e) Relationship to Other Law. - Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

''(f) Definitions. - In this section:

''(1) The terms 'facility', 'hazardous substance', 'release', and 'pollutant or contaminant' have the meanings given such terms under paragraphs (9), (14), (22), and (33) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, respectively (42 U.S.C. 9601(9), (14), (22), and (33)).

''(2) The term 'military installation' has the meaning given such term under section 2687(e) (1) of title 10, United States Code.

''(3) The term 'base closure law' means the following:

''(A) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of div. B of Pub. L. 101-510) (10 U.S.C. 2687 note).

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526) (10 U.S.C. 2687 note).

''(C) Section 2687 of title 10, United States Code.

''(D) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of the enactment of this Act (Oct. 23, 1992).'

DEMONSTRATION PROJECT FOR USE OF NATIONAL RELOCATION CONTRACTOR TO ASSIST DEPARTMENT OF DEFENSE

Pub. L. 102-484, div. B, title XXVIII, Sec. 2822, Oct. 23, 1992, 106 Stat. 2608, provided that:

''(a) Use of National Relocation Contractor. - Subject to the availability of appropriations therefor, the Secretary of Defense shall enter into a one-year contract with a private relocation contractor operating on a nationwide basis to test the cost-effectiveness of using national relocation contractors to administer the Homeowners Assistance Program. The contract shall be competitively awarded not later than 30 days after the date of the enactment of this Act (Oct. 23, 1992).

''(b) Report on Contract. - Not later than one year after the date on which the Secretary of Defense enters into the contract under subsection (a), the Comptroller General shall submit to Congress a report containing the Comptroller General's evaluation of the effectiveness of using the national contractor for administering the program referred to in subsection (a). The report shall compare the cost and efficiency of such administration with the cost and efficiency of -

''(1) the program carried out by the Corps of Engineers using its own employees; and

''(2) the use of contracts with local relocation companies at military installations being closed or realigned.'

ENVIRONMENTAL RESTORATION REQUIREMENTS AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102-190, div. A, title III, Sec. 334, Dec. 5, 1991, 105 Stat. 1340, prescribed requirements for certain installations to be closed under 1989 or 1991 base closure lists by requiring that all draft final remedial investigations and feasibility studies related to environmental restoration activities at each such military

installation be submitted to Environmental Protection Agency not later than 24 months after Dec. 5, 1991, for bases on 1989 closure list and not later than 36 months after such date for bases on 1991 closure list, prior to repeal by Pub. L. 104-201, div. A, title III, Sec. 328, Sept. 23, 1996, 110 Stat. 2483.

WITHHOLDING INFORMATION FROM CONGRESS OR COMPTROLLER GENERAL

Pub. L. 102-190, div. B, title XXVIII, Sec. 2821(i), Dec. 5, 1991, 105 Stat. 1546, provided that: 'Nothing in this section (enacting and amending provisions set out below) or in the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of div. B of Pub. L. 101-510, set out below) shall be construed to authorize the withholding of information from Congress, any committee or subcommittee of Congress, or the Comptroller General of the United States.'

CONSISTENCY IN BUDGET DATA

Pub. L. 102-190, div. B, title XXVIII, Sec. 2822, Dec. 5, 1991, 105 Stat. 1546, as amended by Pub. L. 102-484, div. B, title XXVIII, Sec. 2825, Oct. 23, 1992, 106 Stat. 2609, provided that:

'(a) Military Construction Funding Requests. - In the case of each military installation considered for closure or realignment or for comparative purposes by the Defense Base Closure and Realignment Commission, the Secretary of Defense shall ensure, subject to subsection (b), that the amount of the authorization requested by the Department of Defense for military construction relating to the closure or realignment of the installation in each of the fiscal years 1992 through 1999 for the following fiscal year does not exceed the estimate of the cost of such construction (adjusted as appropriate for inflation) that was provided to the Commission by the Department of Defense.

'(b) Explanation for Inconsistencies. - The Secretary may submit to Congress for a fiscal year a request for the authorization of military construction referred to in subsection (a) in an amount greater than the estimate of the cost of the construction (adjusted as appropriate for inflation) that was provided to the Commission if the Secretary determines that the greater amount is necessary and submits with the request a complete explanation of the reasons for the difference between the requested amount and the estimate.

'(c) Investigation. - (1) The Inspector General of the Department of Defense shall investigate the military construction for which the Secretary is required to submit an explanation to Congress under subsection (b) if the Inspector General determines (under standards prescribed by the Inspector General) that the difference between the requested amount and the estimate for such construction is significant.

'(2) The Inspector General shall submit to the congressional defense committees a report describing the results of each investigation conducted under paragraph (1).'

DISPOSITION OF FACILITIES OF DEPOSITORY INSTITUTIONS ON MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102-190, div. B, title XXVIII, Sec. 2825, Dec. 5, 1991, 105 Stat. 1549, as amended by Pub. L. 103-160, div. B, title XXIX, Sec. 2928(a), (b)(1), (c), Nov. 30, 1993, 107 Stat. 1934, 1935, provided that:

'(a) Authority to Convey Facilities. - (1) Subject to subsection (c) and notwithstanding any other provision of law, the Secretary of the military department having jurisdiction over a military installation being closed pursuant to a base closure law may convey all right, title, and interest of the United States in a facility located on that installation to a depository institution that -

'(A) conducts business in the facility; and

''(B) constructed or substantially renovated the facility using funds of the depository institution.

''(2) In the case of the conveyance under paragraph (1) of a facility that was not constructed by the depository institution but was substantially renovated by the depository institution, the Secretary shall require the depository institution to pay an amount determined by the Secretary to be equal to the value of the facility in the absence of the renovations.

''(b) Authority to Convey Land. - As part of the conveyance of a facility to a depository institution under subsection (a), the Secretary of the military department concerned shall permit the depository institution to purchase the land upon which that facility is located. The Secretary shall offer the land to the depository institution before offering such land for sale or other disposition to any other entity. The purchase price shall be not less than the fair market value of the land, as determined by the Secretary.

''(c) Limitation. - The Secretary of a military department may not convey a facility to a depository institution under subsection (a) if the Secretary determines that the operation of a depository institution at such facility is inconsistent with the redevelopment plan with respect to the installation.

''(d) Base Closure Law Defined. - For purposes of this section, the term 'base closure law' means the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 104 Stat. 1808; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 102 Stat. 2627; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.

''(4) Any other similar law enacted after the date of the enactment of this Act (Dec. 5, 1991).

''(e) Depository Institution Defined. - For purposes of this section, the term 'depository institution' has the meaning given that term in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).''

REPORT ON ENVIRONMENTAL RESTORATION COSTS FOR INSTALLATIONS TO BE CLOSED UNDER 1990 BASE CLOSURE LAW

Pub. L. 102-190, div. B, title XXVIII, Sec. 2827(b), Dec. 5, 1991, 105 Stat. 1551, directed the Secretary of Defense to submit an annual report to Congress on the funding needed for environmental restoration activities at certain designated military installations for the fiscal year for which a budget was submitted and for each of the four following fiscal years, prior to repeal by Pub. L. 104-106, div. A, title X, Sec. 1061(m), Feb. 10, 1996, 110 Stat. 443.

SENSE OF CONGRESS REGARDING JOINT RESOLUTION OF DISAPPROVAL OF 1991 BASE CLOSURE COMMISSION RECOMMENDATION

Pub. L. 102-172, title VIII, Sec. 8131, Nov. 26, 1991, 105 Stat. 1208, provided that: ''It is the sense of the Congress that in acting on the Joint Resolution of Disapproval of the 1991 Base Closure Commission's recommendation, the Congress takes no position on whether there has been compliance by the Base Closure Commission, and the Department of Defense with the requirements of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of div. B of Pub. L. 101-510, set out below). Further, the vote on the resolution of disapproval shall not be interpreted to imply Congressional approval of all actions taken by the Base Closure Commission and the Department of Defense in fulfillment of

the responsibilities and duties conferred upon them by the Defense Base Closure and Realignment Act of 1990, but only the approval of the recommendations issued by the Base Closure Commission.'

REQUIREMENTS FOR BASE CLOSURE AND REALIGNMENT PLANS

Pub. L. 103-335, title VIII, Sec. 8040, Sept. 30, 1994, 108 Stat. 2626, which directed Secretary of Defense to include in any base closure and realignment plan submitted to Congress after Sept. 30, 1994, a complete review of expectations for the five-year period beginning on Oct. 1, 1994, including force structure and levels, installation requirements, a budget plan, cost savings to be realized through realignments and closures of military installations, and the economic impact on local areas affected, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103-139, title VIII, Sec. 8045, Nov. 11, 1993, 107 Stat. 1450.

Pub. L. 102-396, title IX, Sec. 9060, Oct. 6, 1992, 106 Stat. 1915.

Pub. L. 102-172, title VIII, Sec. 8063, Nov. 26, 1991, 105 Stat. 1185.

Pub. L. 101-511, title VIII, Sec. 8081, Nov. 5, 1990, 104 Stat. 1894.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Part A of title XXIX of div. B of Pub. L. 101-510, as amended by Pub. L. 102-190, div. A, title III, Sec. 344(b)(1), div. B, title XXVIII, Sec. 2821(a)-(h)(1), 2827(a)(1), (2), Dec. 5, 1991, 105 Stat. 1345, 1544-1546, 1551; Pub. L. 102-484, div. A, title X, Sec. 1054(b), div. B, title XXVIII, Sec. 2821(b), 2823, Oct. 23, 1992, 106 Stat. 2502, 2607, 2608; Pub. L. 103-160, div. B, title XXIX, Sec. 2902(b), 2903(b), 2904(b), 2905(b), 2907(b), 2908(b), 2918(c), 2921(b), (c), 2923, 2926, 2930(a), Nov. 30, 1993, 107 Stat. 1911, 1914, 1916, 1918, 1921, 1923, 1928-1930, 1932, 1935; Pub. L. 103-337, div. A, title X, Sec. 1070(b)(15), (d)(2), div. B, title XXVIII, Sec. 2811, 2812(b), 2813(c)(2), (d)(2), (e)(2), Oct. 5, 1994, 108 Stat. 2857, 2858, 3053-3056; Pub. L. 103-421, Sec. 2(a)-(c), (f)(2), Oct. 25, 1994, 108 Stat. 4346-4352, 4354; Pub. L. 104-106, div. A, title XV, Sec. 1502(d), 1504(a)(9), 1505(e)(1), div. B, title XXVIII, Sec. 2831(b)(2), 2835, 2836, 2837(a), 2838, 2839(b), 2840(b), Feb. 10, 1996, 110 Stat. 508, 513, 514, 558, 560, 561, 564, 565; Pub. L. 104-201, div. B, title XXVIII, Sec. 2812(b), 2813(b), Sept. 23, 1996, 110 Stat. 2789; Pub. L. 105-85, div. A, title X, Sec. 1073(d)(4)(B), div. B, title XXVIII, Sec. 2821(b), Nov. 18, 1997, 111 Stat. 1905, 1997, provided that:

'SEC. 2901. SHORT TITLE AND PURPOSE

'(a) Short Title. - This part may be cited as the 'Defense Base Closure and Realignment Act of 1990'.

'(b) Purpose. - The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

'SEC. 2902. THE COMMISSION

'(a) Establishment. - There is established an independent commission to be known as the 'Defense Base Closure and Realignment Commission'.

'(b) Duties. - The Commission shall carry out the duties specified for it in this part.

'(c) Appointment. - (1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advice and consent of the Senate.

''(B) The President shall transmit to the Senate the nominations for appointment to the Commission -

''(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

''(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

''(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

''(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with -

''(A) the Speaker of the House of Representatives concerning the appointment of two members;

''(B) the majority leader of the Senate concerning the appointment of two members;

''(C) the minority leader of the House of Representatives concerning the appointment of one member; and

''(D) the minority leader of the Senate concerning the appointment of one member.

''(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

''(d) Terms. - (1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

''(2) The Chairman of the Commission shall serve until the confirmation of a successor.

''(e) Meetings. - (1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

''(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

''(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

''(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness, Sustainability, and Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(ii) The Chairman and the ranking minority party member of the Subcommittee on Military Installations and Facilities of the Committee on National Security of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

''(f) Vacancies. - A vacancy in the Commission shall be filled in

the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

''(g) Pay and Travel Expenses. - (1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

''(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(h) Director of Staff. - (1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

''(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(i) Staff. - (1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

''(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

''(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

''(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

''(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

''(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

''(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may -

''(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

''(ii) review the preparation of such a report; or

DCN: 12058

''(iii) approve or disapprove such a report.

''(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

''(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

''(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

''(A) There may not be more than 15 persons on the staff at any one time.

''(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

''(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

''(j) Other Authority. - (1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

''(2) The Commission may lease space and acquire personal property to the extent funds are available.

''(k) Funding. - (1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

''(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100-526 (set out below). Such funds shall remain available until expended.

''(3) (A) The Secretary may transfer not more than \$300,000 from unobligated funds in the account referred to in subparagraph (B) for the purpose of assisting the Commission in carrying out its duties under this part during October, November, and December 1995. Funds transferred under the preceding sentence shall remain available until December 31, 1995.

''(B) The account referred to in subparagraph (A) is the Department of Defense Base Closure Account established under section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

''(1) Termination. - The Commission shall terminate on December 31, 1995.

''(m) Prohibition Against Restricting Communications. - Section 1034 of title 10, United States Code, shall apply with respect to communications with the Commission.

''SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS

''(a) Force-Structure Plan. - (1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

''(2) Such plan shall include, without any reference (directly or

DCN: 12058

indirectly) to military installations inside the United States that may be closed or realigned under such plan -

''(A) a description of the assessment referred to in paragraph (1);

''(B) a description (i) of the anticipated force structure during and at the end of each such period for each military department (with specifications of the number and type of units in the active and reserve forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

''(C) a description of the anticipated implementation of such force-structure plan.

''(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

''(b) Selection Criteria. - (1) The Secretary shall, by no later than December 31, 1990, publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

''(2) (A) The Secretary shall, by no later than February 15, 1991, publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

''(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the Federal Register, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

''(c) DOD Recommendations. - (1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 1, 1995, publish in the Federal Register and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

''(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

DCN: 12058

''(3) (A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

''(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

''(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning

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''(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

''(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

''(4) In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

''(5) (A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

''(B) Subparagraph (A) applies to the following persons:

''(i) The Secretaries of the military departments.

''(ii) The heads of the Defense Agencies.

''(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

''(6) Any information provided to the Commission by a person described in paragraph (5) (B) shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 24 hours after the submission of the information to the Commission.

''(d) Review and Recommendations by the Commission. - (1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath.

''(2) (A) The Commission shall, by no later than July 1 of each

year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

"(B) Subject to subparagraph (C), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

"(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission -

"(i) makes the determination required by subparagraph (B);

"(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

"(iii) publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and

"(iv) conducts public hearings on the proposed change.

"(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would -

"(i) add a military installation to the list of military installations recommended by the Secretary for closure;

"(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

"(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

"(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

"(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

"(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

"(5) The Comptroller General of the United States shall -

"(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (c); and

"(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

"(e) Review by the President. - (1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or

DCN: 12058

disapproval of the Commission's recommendations.

''(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

''(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

''(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

''(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''(a) In General. - Subject to subsection (b), the Secretary shall -

''(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

''(2) realign all military installations recommended for realignment by such Commission in each such report;

''(3) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

''(4) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

''(b) Congressional Disapproval. - (1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908, disapproving such recommendations of the Commission before the earlier of -

''(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

''(B) the adjournment of Congress sine die for the session during which such report is transmitted.

''(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of a period.

''SEC. 2905. IMPLEMENTATION

''(a) In General. - (1) In closing or realigning any military installation under this part, the Secretary may -

''(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such

land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

''(B) provide -

''(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

''(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation,

if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

''(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account;

''(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

''(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

''(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

''(b) Management and Disposal of Property. - (1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part -

''(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

''(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484);

''(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code; and

''(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

''(2) (A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with -

DCN: 12058

"(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); and

"(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

"(B) The Secretary may, with the concurrence of the Administrator of General Services -

"(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

"(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

"(C) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

"(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

"(3) (A) Not later than 6 months after the date of approval of the closure of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall -

"(i) inventory the personal property located at the installation; and

"(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

"(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with -

"(i) the local government in whose jurisdiction the installation is wholly located; or

"(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

"(C) (i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of -

"(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

"(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

"(III) twenty-four months after the date of approval of the closure of the installation; or

"(IV) ninety days before the date of the closure of the installation.

"(ii) The activities referred to in clause (i) are activities

relating to the closure of an installation to be closed under this part as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any personal property located at an installation to be closed under this part if the property -

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) 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);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v) (I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C) (i) and (D), the Secretary may carry out any activity referred to in subparagraph (C) (ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4) (A) The Secretary may transfer real property and personal property located at a military installation to be closed under this part to the redevelopment authority with respect to the installation.

''(B) (i) (I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

''(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair

market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

"(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this part will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure. The Secretary shall prescribe in the regulations under clause (i)(II) the manner of determining whether communities are eligible for the transfer of property under this clause.

"(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

"(C)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this part (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

"(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

"(iii) A lease under clause (i) may not require rental payments by the United States.

"(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

"(D)(i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

"(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer property similar to such property (including property not located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

"(E) The provisions of section 120(h) of the Comprehensive

DCN: 12058

Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(F) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5) (A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure of that installation.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

''(C) (i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this part as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

''(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

''(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 (Nov. 18, 1997) and ending on July 31, 2001.

''(6) (A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence (Oct. 25, 1994), see paragraph (7).

''(B) (i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall -

DCN: 12058

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall -

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act (42 U.S.C. 11411(c)(1)(B)); and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which -

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services -

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph

(C) (iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e) (2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i) (I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i) (II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i) (III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G) (i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act (42 U.S.C. 11411) while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7) (A) The disposal of buildings and property located at installations approved for closure or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).

''(B) (i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall -

''(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

''(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

''(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information

DCN: 12058

on any building or property that is identified under subclause (II); and

''(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

''(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

''(C) (i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B) (i) (II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

''(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

''(iii) In providing assistance under clause (ii), a redevelopment authority shall -

''(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

''(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

''(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii) (II) with respect to an installation as soon as is practicable after the date of approval of closure of the installation.

''(D) (i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

''(ii) The date specified under clause (i) shall be -

''(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after that date; and

''(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

''(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall -

''(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

''(II) notify the Secretary of Defense of the date.

''(E) (i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or

property at an installation to assist the homeless, a representative of the homeless shall submit the following:

''(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

''(II) An assessment of the need for the program.

''(III) 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.

''(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

''(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

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

''(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) 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.

''(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

''(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent upon the decision regarding the disposal of the buildings and property covered by the agreements by the Secretary of Defense under subparagraph (K) or (L).

''(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

''(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

''(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

''(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall include in an application under clause (i) the following:

''(I) A copy of the redevelopment plan, including a summary of

any public comments on the plan received by the redevelopment authority under subparagraph (F) (iii).

''(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

''(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C) (iii) (II) in preparing the plan.

''(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

''(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

''(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F) (ii).

''(H) (i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless

''(I) 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 plan for the use and needs of the homeless in such communities;

''(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

''(III) 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;

''(IV) 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; and

''(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

''(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

''(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and

DCN: 12058

consultations.

''(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

''(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include -

''(I) an explanation of that determination; and

''(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

''(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to -

''(I) revise the plan in order to address the determination; and

''(II) submit the revised plan to the Secretary of Defense and the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall submit a revised plan under this subparagraph to such Secretaries, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

''(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

''(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

''(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

''(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

''(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

''(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United

States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (probably means subchapter II (Sec. 47151 et seq.) of chapter 471 of Title 49, Transportation) (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

"(L) (i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H) (i), or if no revised plan is so submitted, that Secretary shall -

"(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii) (II) of that subparagraph;

"(II) consult with the representatives referred to in subclause (I), 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;

"(III) request that each such representative submit to that Secretary the items described in clause (ii); and

"(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H) (i).

"(ii) The Secretary of Housing and Urban Development may request under clause (i) (III) that a representative of the homeless submit to that Secretary the following:

"(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 that Secretary 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.

"(IV) A certification 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.

"(iii) Not later than 90 days after the date of the receipt of a revised plan for an installation under subparagraph (J), the Secretary of Housing and Urban Development shall -

"(I) notify the Secretary of Defense and the redevelopment authority concerned of the buildings and property at an installation under clause (i) (IV) that the Secretary of Housing and Urban Development determines are suitable for use to assist the homeless; and

"(II) notify the Secretary of Defense of the extent to which the revised plan meets the criteria set forth in subparagraph (H) (i).

"(iv) (I) Upon notice from the Secretary of Housing and Urban Development with respect to an installation under clause (iii), the Secretary of Defense shall dispose of buildings and property at the installation in consultation with the Secretary of Housing and

DCN: 12058

Urban Development and the redevelopment authority concerned.

''(II) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan submitted by the redevelopment authority for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation. The Secretary of Defense shall incorporate the notification of the Secretary of Housing and Urban Development under clause (iii)(I) as part of the proposed Federal action for the installation only to the extent, if any, that the Secretary of Defense considers such incorporation to be appropriate and consistent with the best and highest use of the installation as a whole, taking into consideration the redevelopment plan submitted by the redevelopment authority.

''(III) The Secretary of Defense shall dispose of buildings and property under subclause (I) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give deference to the redevelopment plan submitted by the redevelopment authority for the installation.

''(IV) The disposal under subclause (I) of buildings and property to assist the homeless shall be without consideration.

''(V) In the case of a request for a conveyance under subclause (I) of buildings and property for public benefit under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (probably means subchapter II (Sec. 47151 et seq.) of Title 49, Transportation) (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

''(M) (i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K) or (L), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

''(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority 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. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

''(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban

DCN: 12058

Development, in consultation with the Secretary of Housing and Urban Development.

''(O) For purposes of this paragraph, the term 'communities in the vicinity of the installation', in the case of an installation, means 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.

''(P) For purposes of this paragraph, the term 'other interested parties', in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.

''(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) Applicability of National Environmental Policy Act of 1969. - (1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

''(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

''(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider -

''(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;

''(ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or

''(iii) military installations alternative to those recommended or selected.

DCN: 12058

"(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2) (A), may not be brought more than 60 days after the date of such act or failure to act.

"(d) Waiver. - The Secretary of Defense may close or realign military installations under this part without regard to -

"(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and

"(2) sections 2662 and 2687 of title 10, United States Code.

"(e) Transfer Authority in Connection With Payment of Environmental Remediation Costs. - (1) (A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

"(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b) (6) (F) during the period provided for that use, or expression of interest in use, under that subsection.

"(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

"(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that -

"(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

"(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

"(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

"(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

"(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or

DCN: 12058

entities described in subsection (a)(2) of such section 330.

''(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 (Nov. 30, 1993).

''(f) Transfer Authority in Connection With Construction or Provision of Military Family Housing. - (1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this part with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents. The Secretary may not select real property for transfer under this paragraph if the property is identified in the redevelopment plan for the installation as property essential to the reuse or redevelopment of the installation.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if -

''(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

''(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of the property or facilities agrees to pay to the Secretary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

''(3) Notwithstanding paragraph (2) of section 2906(a), the Secretary may deposit funds received under paragraph (2)(B) in the Department of Defense Family Housing Improvement Fund established under section 2883(a) of title 10, United States Code.

''(4) The Secretary shall submit to the congressional defense committees a report describing each agreement proposed to be entered into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 30-day period beginning on the date the congressional defense committees receive the report regarding the agreement.

''(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.

''(g) Acquisition of Manufactured Housing. - (1) In closing or realigning any military installation under this part, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this part, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that -

''(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

''(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

DCN: 12058

"(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

"(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

"SEC. 2906. ACCOUNT

"(a) In General. - (1) There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account 1990' which shall be administered by the Secretary as a single account.

"(2) There shall be deposited into the Account -

"(A) funds authorized for and appropriated to the Account;

"(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees;

"(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation closed or realigned under this part; and

"(D) proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

"(b) ~~Use of Funds.~~ - (1) ~~The Secretary may use the funds in the Account only for the purposes described in section 2905 or, after September 30, 1995, for environmental restoration and property management and disposal at installations closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).~~

"(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

"(c) Reports. - (1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

"(B) The report for a fiscal year shall include the following:

"(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

"(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

"(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

DCN: 12058

''(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of -

''(I) any failure to carry out military construction projects that were so proposed; and

''(II) any expenditures for military construction projects that were not so proposed.

''(2) Unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this part shall be held in the Account until transferred by law after the congressional defense committees receive the report transmitted under paragraph (3).

''(3) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part, the Secretary shall transmit to the congressional defense committees a report containing an accounting of -

''(A) all the funds deposited into and expended from the Account or otherwise expended under this part; and

''(B) any amount remaining in the Account.

''(d) Disposal or Transfer of Commissary Stores and Property Purchased With Nonappropriated Funds. - (1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b) (7) (C) of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526) (10 U.S.C. 2687 note).

''(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

''(3) The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving -

''(A) commissary stores; and

''(B) real property and facilities for nonappropriated fund instrumentalities.

''(4) As used in this subsection:

''(A) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

''(B) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

''(C) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

DCN: 12058

'(e) Account Exclusive Source of Funds for Environmental Restoration Projects. - Except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the termination of the authority of the Secretary to carry out a closure or realignment under this part.

'SEC. 2907. REPORTS

'As part of the budget request for fiscal year 1993 and for each fiscal year thereafter for the Department of Defense, the Secretary shall transmit to the congressional defense committees of Congress

'(1) a schedule of the closure and realignment actions to be carried out under this part in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

'(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

'SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

'(a) Terms of the Resolution. - For purposes of section 2904(b), the term 'joint resolution' means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and -

'(1) which does not have a preamble;

'(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on - - - ', the blank space being filled in with the appropriate date; and

'(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.'.

'(b) Referral. - A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on National Security of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

'(c) Discharge. - If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

'(d) Consideration. - (1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to

DCN: 12058

the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) Consideration by Other House. - (1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

''(B) With respect to a resolution described in subsection (a) of the House receiving the resolution -

''(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

''(f) Rules of the Senate and House. - This section is enacted by Congress -

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House

DCN: 12058

in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

'SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

''(a) In General. - Except as provided in subsection (c), during the period beginning on the date of the enactment of this Act (Nov. 5, 1990) and ending on December 31, 1995, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

''(b) Restriction. - Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a) -

''(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

''(2) to carry out any closure or realignment of a military installation inside the United States.

''(c) Exception. - Nothing in this part affects the authority of the Secretary to carry out -

''(1) closures and realignments under title II of Public Law 100-526 (set out below); and

''(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

'SEC. 2910. DEFINITIONS

''As used in this part:

''(1) The term 'Account' means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

''(2) The term 'congressional defense committees' means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives.

''(3) The term 'Commission' means the Commission established by section 2902.

''(4) The term 'military installation' means 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 projects not under the primary jurisdiction or control of the Department of Defense.

''(5) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

''(6) The term 'Secretary' means the Secretary of Defense.

''(7) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

DCN: 12058

'(8) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires.

'(9) The term 'redevelopment authority', in the case of an installation to be closed under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

'(10) The term 'redevelopment plan' in the case of an installation to be closed under this part, means a plan that -

'(A) is agreed to by the local redevelopment authority with respect to the installation; and

'(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

'(11) The term 'representative of the homeless' has the meaning given such term in section 501(i)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

SEC. 2911. CLARIFYING AMENDMENT

'(Amended this section.)'

(For effective date of amendment by section 2813(d)(2) of Pub. L. 103-337 to section 2910 of Pub. L. 101-510, set out above, see Effective Date of 1994 Amendments by Section 2813(d)(1) and (2) of Pub. L. 103-337 note set out above.)

(Section 2902(c) of Pub. L. 103-160 provided that: 'For the purposes of section 2905(b)(3) of the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, set out above), as added by subsection (b), the date of approval of closure of any installation approved for closure before the date of the enactment of this Act (Nov. 30, 1993) shall be deemed to be the date of the enactment of this Act.'')

(Section 2904(c) of Pub. L. 103-160 provided that: 'The Secretary of Defense shall make the determinations required under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, set out above), as added by subsection (b), in the case of installations approved for closure under such Act (part A of title XXIX of div. B of Pub. L. 101-510, set out above) before the date of the enactment of this Act (Nov. 30, 1993), not later than 6 months after the date of the enactment of this Act.'')

(Section 2930(b) of Pub. L. 103-160 provided that: 'The amendment made by this section (amending section 2903(d)(1) of Pub. L. 101-510 set out above) shall apply with respect to all public hearings conducted by the Defense Base Closure and Realignment Commission after the date of the enactment of this Act (Nov. 30, 1993).''')

(For effective date of amendments by section 344(b)(1) of Pub. L. 102-190 to section 2906 of Pub. L. 101-510, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102-190 note set out above.)

(Section 2821(h)(2) of Pub. L. 102-190 provided that: 'The amendment made by paragraph (1) (amending section 2910 of Pub. L. 101-510 set out above) shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 (section 2910 of Pub. L. 101-510) on that date.'')

(Section 2827(a)(3) of Pub. L. 102-190 provided that: ''The amendments made by this subsection (amending sections 2905 and 2906 of Pub. L. 101-510 set out above) shall take effect on the date of the enactment of this Act (Dec. 5, 1991).''

(References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, Sec. 101(c)(1)) of Pub. L. 101-509, set out in a note under section 5376 of Title 5.)

CLOSURE OF FOREIGN MILITARY INSTALLATIONS

Pub. L. 102-396, title IX, Sec. 9047A, Oct. 6, 1992, 106 Stat. 1913, as amended by Pub. L. 104-106, div. A, title XV, Sec. 1502(f)(2), Feb. 10, 1996, 110 Stat. 509, provided that:

''Notwithstanding any other provision of law, the Secretary of Defense may, by Executive Agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: Provided, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: Provided further, That the Department of Defense's budget submission for each fiscal year shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: Provided further, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: Provided further, That each such Executive Agreement with a NATO member host nation shall be reported to the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on National Security of the House of Representatives thirty days prior to the conclusion and endorsement of any such agreement established under this provision.''

Similar provisions for specified fiscal years were contained in the following appropriation acts:

Pub. L. 105-56, title VIII, Sec. 8019, Oct. 8, 1997, 111 Stat. 1224.

Pub. L. 104-208, div. A, title I, Sec. 101(b) (title VIII, Sec. 8020), Sept. 30, 1996, 110 Stat. 3009-71, 3009-92.

Pub. L. 104-61, title VIII, Sec. 8027, Dec. 1, 1995, 109 Stat. 657.

Pub. L. 103-335, title VIII, Sec. 8033, Sept. 30, 1994, 108 Stat. 2625.

Pub. L. 103-139, title VIII, Sec. 8036, Nov. 11, 1993, 107 Stat. 1448.

Section 2921 of Pub. L. 101-510, as amended by Pub. L. 102-190, div. A, title III, Sec. 344(b)(2), Dec. 5, 1991, 105 Stat. 1345; Pub. L. 102-484, div. B, title XXVIII, Sec. 2821(c), 2827, Oct. 23, 1992, 106 Stat. 2608, 2609; Pub. L. 103-160, div. B, title XXIX, Sec. 2924(b), Nov. 30, 1993, 107 Stat. 1931; Pub. L. 103-337, div. A, title XIII, Sec. 1305(c), div. B, title XXVIII, Sec. 2817, Oct. 5, 1994, 108 Stat. 2891, 3057; Pub. L. 104-106, div. A, title X, Sec. 1063(b), title XV, Sec. 1502(c)(4)(D), 1505(e)(2), Feb. 10, 1996, 110 Stat. 444, 508, 515; Pub. L. 105-85, div. A,

DCN: 12058

title X, Sec. 1073(d)(4)(C), Nov. 18, 1997, 111 Stat. 1905, provided that:

''(a) Sense of Congress. - It is the sense of the Congress that -

''(1) the termination of military operations by the United States at military installations outside the United States should be accomplished at the discretion of the Secretary of Defense at the earliest opportunity;

''(2) in providing for such termination, the Secretary of Defense should take steps to ensure that the United States receives, through direct payment or otherwise, consideration equal to the fair market value of the improvements made by the United States at facilities that will be released to host countries;

''(3) the Secretary of Defense, acting through the military component commands or the sub-unified commands to the combatant commands, should be the lead official in negotiations relating to determining and receiving such consideration; and

''(4) the determination of the fair market value of such improvements released to host countries in whole or in part by the United States should be handled on a facility-by-facility basis.

''(b) Residual Value. - (1) For each installation outside the United States at which military operations were being carried out by the United States on October 1, 1990, the Secretary of Defense shall transmit, by no later than June 1, 1991, an estimate of the fair market value, as of January 1, 1991, of the improvements made by the United States at facilities at each such installation.

''(2) For purposes of this section:

''(A) The term 'fair market value of the improvements' means the value of improvements determined by the Secretary on the basis of their highest use.

''(B) The term 'improvements' includes new construction of facilities and all additions, improvements, modifications, or renovations made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

''(c) Establishment of Special Account. - (1) There is established on the books of the Treasury a special account to be known as the 'Department of Defense Overseas Military Facility Investment Recovery Account'. Except as provided in subsection (d), amounts paid to the United States, pursuant to any treaty, status of forces agreement, or other international agreement to which the United States is a party, for the residual value of real property or improvements to real property used by civilian or military personnel of the Department of Defense shall be deposited into such account.

''(2) Money deposited in the Department of Defense Overseas Military Facility Investment Recovery Account shall be available to the Secretary of Defense for payment, as provided in appropriation Acts, of costs incurred by the Department of Defense in connection with -

''(A) facility maintenance and repair and environmental restoration at military installations in the United States; and

''(B) facility maintenance and repair and compliance with applicable environmental laws at military installations outside the United States that the Secretary anticipates will be occupied by the Armed Forces for a long period.

''(3) Funds in the Department of Defense Overseas Facility Investment Recovery Account shall remain available until expended.

''(d) Amounts Corresponding to the Value of Property Purchased

DCN: 12058

With Nonappropriated Funds. - (1) In the case of a payment referred to in subsection (c)(1) for the residual value of real property or improvements at an overseas military facility, the portion of the payment that is equal to the depreciated value of the investment made with nonappropriated funds shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526, set out below). The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance by appropriation Acts) for the purpose of acquiring, constructing, or improving commissary stores and nonappropriated fund instrumentalities.

''(2) As used in this subsection:

''(A) The term 'nonappropriated funds' means funds received from -

''(i) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code; or

''(ii) a nonappropriated fund instrumentality.

''(B) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(e) Negotiations for Payments-in-Kind. - (1) Before the Secretary of Defense enters into negotiations with a host country regarding the acceptance by the United States of any payment-in-kind in connection with the release to the host country of improvements made by the United States at military installations in the host country, the Secretary shall submit to the appropriate congressional committees a written notice regarding the intended negotiations.

''(2) The notice shall contain the following:

''(A) A justification for entering into negotiations for payments-in-kind with the host country.

''(B) The types of benefit options to be pursued by the Secretary in the negotiations.

''(C) A discussion of the adjustments that are intended to be made in the future-years defense program or in the budget of the Department of Defense for the fiscal year in which the notice is submitted or the following fiscal year in order to reflect costs that it may no longer be necessary for the United States to incur as a result of the payments-in-kind to be sought in the negotiations.

''(3) For purposes of this subsection, the appropriate congressional committees are -

''(A) the Committee on National Security, the Committee on Appropriations, and the National Security Subcommittee of the Committee on Appropriations of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Appropriations, and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

''(f) OMB Review of Proposed Settlements. - (1) The Secretary of Defense may not enter into an agreement of settlement with a host country regarding the release to the host country of improvements made by the United States to facilities at an installation located in the host country until 30 days after the date on which the Secretary submits the proposed settlement to the Director of the

DCN: 12058

Office of Management and Budget. The prohibition set forth in the preceding sentence shall apply only to agreements of settlement for improvements having a value in excess of \$10,000,000. The Director shall evaluate the overall equity of the proposed settlement. In evaluating the proposed settlement, the Director shall consider such factors as the extent of the United States capital investment in the improvements being released to the host country, the depreciation of the improvements, the condition of the improvements, and any applicable requirements for environmental remediation or restoration at the installation.

''(2) Each year, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on each proposed agreement of settlement that was not submitted by the Secretary to the Director of the Office of Management and Budget in the previous year under paragraph (1) because the value of the improvements to be released pursuant to the proposed agreement did not exceed \$10,000,000.

''(g) Congressional Oversight of Payments-In-Kind. - (1) Not less than 30 days before concluding an agreement for acceptance of military construction or facility improvements as a payment-in-kind, the Secretary of Defense shall submit to Congress a notification on the proposed agreement. Any such notification shall contain the following:

''(A) A description of the military construction project or facility improvement project, as the case may be.

''(B) A certification that the project is needed by United States forces.

''(C) An explanation of how the project will aid in the achievement of the mission of those forces.

''(D) A certification that, if the project were to be carried out by the Department of Defense, appropriations would be necessary for the project and it would be necessary to provide for the project in the next future-years defense program.

''(2) Not less than 30 days before concluding an agreement for acceptance of host nation support or host nation payment of operating costs of United States forces as a payment-in-kind, the Secretary of Defense shall submit to Congress a notification on the proposed agreement. Any such notification shall contain the following:

''(A) A description of each activity to be covered by the payment-in-kind.

''(B) A certification that the costs to be covered by the payment-in-kind are included in the budget of one or more of the military departments or that it will otherwise be necessary to provide for payment of such costs in a budget of one or more of the military departments.

''(C) A certification that, unless the payment-in-kind is accepted or funds are appropriated for payment of such costs, the military mission of the United States forces with respect to the host nation concerned will be adversely affected.''

(For effective date of amendment by section 344(b)(2) of Pub. L. 102-190 to section 2921 of Pub. L. 101-510, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102-190 note set out above.)

TASK FORCE REPORT

Pub. L. 102-380, Sec. 125, Oct. 5, 1992, 106 Stat. 1372, provided that:

''(a) The environmental response task force established in section 2923(c) of the National Defense Authorization Act for

Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1821) (set out below) shall reconvene and shall, until the date (as determined by the Secretary of Defense) on which all base closure activities required under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 102 Stat. 2627) (set out below) are completed -

''(1) monitor the progress of relevant Federal and State agencies in implementing the recommendations of the task force contained in the report submitted under paragraph (1) of such section; and

''(2) annually submit to the Congress a report containing -

''(A) recommendations concerning ways to expedite and improve environmental response actions at military installations (or portions of installations) that are being closed or subject to closure under such title;

''(B) any additional recommendations that the task force considers appropriate; and

''(C) a summary of the progress made by relevant Federal and State agencies in implementing the recommendations of the task force.

''(b) The task force shall consist of -

''(1) the individuals (or their designees) described in section 2923(c)(2) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1821); and

''(2) a representative of the Urban Land Institute (or such representative's designee), appointed by the Speaker of the House of Representatives and the Majority Leader of the Senate.''
Section 2923(c) of Pub. L. 101-510 provided that:

''(1) Not later than 12 months after the date of the enactment of this Act (Nov. 5, 1990), the Secretary of Defense shall submit to Congress a report containing the findings and recommendations of the task force established under paragraph (2) concerning -

''(A) ways to improve interagency coordination, within existing laws, regulations, and administrative policies, of environmental response actions at military installations (or portions of installations) that are being closed, or are scheduled to be closed, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526) (set out below); and

''(B) ways to consolidate and streamline, within existing laws and regulations, the practices, policies, and administrative procedures of relevant Federal and State agencies with respect to such environmental response actions so as to enable those actions to be carried out more expeditiously.

''(2) There is hereby established an environmental response task force to make the findings and recommendations, and to prepare the report, required by paragraph (1). The task force shall consist of the following (or their designees):

''(A) The Secretary of Defense, who shall be chairman of the task force.

''(B) The Attorney General.

''(C) The Administrator of the General Services Administration.

''(D) The Administrator of the Environmental Protection Agency.

''(E) The Chief of Engineers, Department of the Army.

''(F) A representative of a State environmental protection agency, appointed by the head of the National Governors Association.

''(G) A representative of a State attorney general's office, appointed by the head of the National Association of Attorney Generals.

DCN: 12058

''(H) A representative of a public-interest environmental organization, appointed by the Speaker of the House of Representatives.''

COMMUNITY PREFERENCE CONSIDERATION IN CLOSURE AND REALIGNMENT OF
MILITARY INSTALLATIONS

Section 2924 of Pub. L. 101-510 provided that: ''In any process of selecting any military installation inside the United States for closure or realignment, the Secretary of Defense shall take such steps as are necessary to assure that special consideration and emphasis is given to any official statement from a unit of general local government adjacent to or within a military installation requesting the closure or realignment of such installation.''

CONTRACTS FOR CERTAIN ENVIRONMENTAL RESTORATION ACTIVITIES

Section 2926 of Pub. L. 101-510, as amended by Pub. L. 103-160, div. A, title IX, Sec. 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

''(a) Establishment of Model Program. - Not later than 90 days after the date of enactment of this Act (Nov. 5, 1990), the Secretary of Defense shall establish a model program to improve the efficiency and effectiveness of the base closure environmental restoration program.

''(b) Administrator of Program. - The Secretary shall designate the Deputy Assistant Secretary of Defense for Environment as the Administrator of the model program referred to in subsection (a). The Deputy Assistant Secretary shall report to the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology.

''(c) Applicability. - This section shall apply to environmental restoration activities at installations selected by the Secretary pursuant to the provisions of subsection (d)(1).

''(d) Program Requirements. - In carrying out the model program, the Secretary of Defense shall:

''(1) Designate for the model program two installations under his jurisdiction that have been designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526) (see Short Title of 1988 Amendment note above) and for which preliminary assessments, site inspections, and Environmental Impact Statements required by law or regulation have been completed. The Secretary shall designate only those installations which have satisfied the requirements of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526) (set out below).

''(2) Compile a prequalification list of prospective contractors for solicitation and negotiation in accordance with the procedures set forth in title IX of the Federal Property and Administrative Services Act (Public Law 92-582; 40 U.S.C. 541 et seq., as amended) (probably means title IX of the Federal Property and Administrative Services Act of 1949, act June 30, 1949). Such contractors shall satisfy all applicable statutory and regulatory requirements. In addition, the contractor selected for one of the two installations under this program shall indemnify the Federal Government against all liabilities, claims, penalties, costs, and damages caused by (A) the contractor's breach of any term or provision of the contract; and (B) any negligent or willful act or omission of the contractor, its employees, or its subcontractors in the performance of the contract.

''(3) Within 180 days after the date of enactment of this Act (Nov. 5, 1990), solicit proposals from qualified contractors for response action (as defined under section 101 of the

DCN: 12058

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)) at the installations designated under paragraph (1). Such solicitations and proposals shall include the following:

''(A) Proposals to perform response action. Such proposals shall include provisions for receiving the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies.

''(B) To the maximum extent possible, provisions offered by single prime contractors to perform all phases of the response action, using performance specifications supplied by the Secretary of Defense and including any safeguards the Secretary deems essential to avoid conflict of interest.

''(4) Evaluate bids on the basis of price and other evaluation criteria.

''(5) Subject to the availability of authorized and appropriated funds to the Department of Defense, make contract awards for response action within 120 days after the solicitation of proposals pursuant to paragraph (3) for the response action, or within 120 days after receipt of the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies, whichever is later.

''(e) Application of Section 120 of CERCLA. - Activities of the model program shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620).

''(f) Expedited Agreements. - The Secretary shall, with the concurrence of the Administrator of the Environmental Protection Agency, assure compliance with all applicable Federal statutes and regulations and, in addition, take all reasonable and appropriate measures to expedite all necessary administrative decisions, agreements, and concurrences.

''(g) Report. - The Secretary of Defense shall include a description of the progress made during the preceding fiscal year in implementing and accomplishing the goals of this section within the annual report to Congress required by section 2706 of title 10, United States Code.

''(h) Applicability of Existing Law. - Nothing in this section affects or modifies, in any way, the obligations or liability of any person under other Federal or State law, including common law, with respect to the disposal or release of hazardous substances or pollutants or contaminants as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).''

CONSIDERATION OF DEPARTMENT OF DEFENSE HOUSING FOR COAST GUARD

Pub. L. 101-225, title II, Sec. 216, Dec. 12, 1989, 103 Stat. 1915, provided that: ''Notwithstanding any other provision of law, the Coast Guard is deemed to be an instrumentality within the Department of Defense for the purposes of section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526) (10 U.S.C. 2687 (note)).''

FIVE-YEAR PLAN FOR ENVIRONMENTAL RESTORATION AT BASES TO BE CLOSED

Pub. L. 101-189, div. A, title III, Sec. 353, Nov. 29, 1989, 103 Stat. 1423, directed Secretary of Defense to develop a comprehensive five-year plan for environmental restoration at military installations that would be closed or realigned during fiscal years 1991 through 1995, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act, Pub. L. 100-526, set out below, and, at same time President submits to

Congress budget for fiscal year 1991 pursuant to 31 U.S.C. 1105, to submit to Congress a report on the five-year plan.

PROHIBITION ON REDUCING END STRENGTH LEVELS FOR MEDICAL PERSONNEL
AS A RESULT OF BASE CLOSURES AND REALIGNMENTS

Pub. L. 101-189, div. A, title VII, Sec. 723, Nov. 29, 1989, 103 Stat. 1478, provided that:

''(a) Prohibition. - The end strength levels for medical personnel for each component of the Armed Forces, and the number of civilian personnel of the Department of Defense assigned to military medical facilities, may not be reduced as a result of the closure or realignment of a military installation under section 2687 of title 10, United States Code, or title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

''(b) Medical Personnel Defined. - For purposes of subsection (a), the term 'medical personnel' has the meaning given that term in subparagraph (D) of section 115(b)(1) of title 10, United States Code.''

USE OF CLOSED BASES FOR PRISONS AND DRUG TREATMENT FACILITIES

Pub. L. 101-189, div. B, title XXVIII, Sec. 2832, Nov. 29, 1989, 103 Stat. 1660, provided that:

''(a) Findings. - The Congress finds that -

''(1) the war on drugs is one of the highest priorities of the Federal Government;

''(2) to effectively wage the war on drugs, adequate penal and correctional facilities and a substantial increase in the number and capacity of drug treatment facilities are needed;

''(3) under the base closure process, authorized by title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 102 Stat. 2627) (set out below), 86 military bases are scheduled for closure; and

''(4) facilities rendered excess by the base closure process should be seriously considered for use as prisons and drug treatment facilities, as appropriate.

''(b) Sense of Congress. - It is the sense of Congress that the Secretary of Defense should, pursuant to the provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act, give priority to making real property (including the improvements thereon) of the Department of Defense rendered excess or surplus as a result of the recommendations of the Commission on Base Realignment and Closure available to another Federal agency or a State or local government for use as a penal or correctional facility or as a drug abuse prevention, treatment, or rehabilitation center.''

NOTICE TO LOCAL AND STATE EDUCATIONAL AGENCIES OF ENROLLMENT
CHANGES DUE TO BASE CLOSURES AND REALIGNMENTS

Pub. L. 101-189, div. B, title XXVIII, Sec. 2833, Nov. 29, 1989, 103 Stat. 1661, provided that:

''(a) Identification of Enrollment Changes. - (1) Not later than January 1 of each year in which any activities necessary to close or realign a military installation under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 102 Stat. 2627) (set out below) are conducted, the Secretary of Defense shall identify, to the extent practicable, each local educational agency that will experience at least a 5-percent increase or at least a 10-percent reduction in the number of dependent children of members of the Armed Forces and of civilian employees of the Department of Defense enrolled in schools under the jurisdiction of such agency during the next academic year (compared with the number of such children enrolled in such schools

DCN: 12058

during the preceding year) as a result of the closure or realignment of a military installation under that Act (Pub. L. 100-526, see Short Title of 1988 Amendment note above).

''(2) The Secretary shall carry out this subsection in consultation with the Secretary of Education.

''(b) Notice Required. - Not later than 30 days after the date on which the Secretary of Defense identifies a local educational agency under subsection (a), the Secretary shall transmit a written notice of the schedule for the closure or realignment of the military installation affecting that local educational agency to that local educational agency and to the State government education agency responsible for administering State government education programs involving that local educational agency.''

CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 100-526, title II, Oct. 24, 1988, 102 Stat. 2627, as amended by Pub. L. 101-510, div. B, title XXIX, Sec. 2923(b)(1), Nov. 5, 1990, 104 Stat. 1821; Pub. L. 102-190, div. A, title III, Sec. 344(a), Dec. 5, 1991, 105 Stat. 1344; Pub. L. 102-484, div. B, title XXVIII, Sec. 2821(a), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 103-160, div. B, title XXIX, Sec. 2902(a), 2903(a), 2904(a), 2905(a), 2907(a), 2908(a), 2918(b), 2921(a), Nov. 30, 1993, 107 Stat. 1909, 1912, 1915, 1916, 1921, 1922, 1928, 1929; Pub. L. 103-337, div. A, title X, Sec. 1070(b)(13), div. B, title XXVIII, Sec. 2812(a), 2813(a)-(c)(1), (d)(1), (e)(1), Oct. 5, 1994, 108 Stat. 2857, 3054, 3055; Pub. L. 103-421, Sec. 2(f)(1), Oct. 25, 1994, 108 Stat. 4354; Pub. L. 104-106, div. A, title XV, Sec. 1504(a)(9), 1505(e)(3), div. B, title XXVIII, Sec. 2831(b)(1), 2839(a), 2840(a), Feb. 10, 1996, 110 Stat. 513, 515, 558, 563, 564; Pub. L. 104-201, div. B, title XXVIII, Sec. 2811, 2812(a), 2813(a), Sept. 23, 1996, 110 Stat. 2788, 2789; Pub. L. 105-85, div. A, title X, Sec. 1073(d)(6), div. B, title XXVIII, Sec. 2821(a), Nov. 18, 1997, 111 Stat. 1906, 1996, provided that:

''SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''The Secretary shall -

''(1) close all military installations recommended for closure by the Commission on Base Realignment and Closure in the report transmitted to the Secretary pursuant to the charter establishing such Commission;

''(2) realign all military installations recommended for realignment by such Commission in such report; and

''(3) initiate all such closures and realignments no later than September 30, 1991, and complete all such closures and realignments no later than September 30, 1995, except that no such closure or realignment may be initiated before January 1, 1990.

''SEC. 202. CONDITIONS

''(a) In General. - The Secretary may not carry out any closure or realignment of a military installation under this title unless -

''(1) no later than January 16, 1989, the Secretary transmits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Defense will implement, all of the military installation closures and realignments recommended by the Commission in the report referred to in section 201(1);

''(2) the Commission has recommended, in the report referred to in section 201(1), the closure or realignment, as the case may be, of the installation, and has transmitted to the Committees on Armed Services of the Senate and the House of Representatives a copy of such report and the statement required by section

DCN: 12058

203(b)(2); and

''(3) the Secretary of Defense has transmitted to the Commission the study required by section 206(b).

''(b) Joint Resolution. - The Secretary may not carry out any closure or realignment under this title if, within the 45-day period beginning on March 1, 1989, a joint resolution is enacted, in accordance with the provisions of section 208, disapproving the recommendations of the Commission. The days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of such 45-day period.

''(c) Termination of Authority. - (1) Except as provided in paragraph (2), the authority of the Secretary to carry out any closure or realignment under this title shall terminate on October 1, 1995.

''(2) The termination of authority set forth in paragraph (1) shall not apply to the authority of the Secretary to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

''SEC. 203. THE COMMISSION

''(a) Membership. - The Commission shall consist of 12 members appointed by the Secretary of Defense.

''(b) Duties. - The Commission shall -

''(1) transmit the report referred to in section 201(1) to the Secretary no later than December 31, 1988, and shall include in such report a description of the Commission's recommendations of the military installations to which functions will be transferred as a result of the closures and realignments recommended by the Commission; and

''(2) on the same date on which the Commission transmits such report to the Secretary, transmit to Committees on Armed Services of the Senate and the House of Representatives -

''(A) a copy of such report; and

''(B) a statement certifying that the Commission has identified the military installations to be closed or realigned by reviewing all military installations inside the United States, including all military installations under construction and all those planned for construction.

''(c) Staff. - Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988 in any capacity other than as an employee of the Commission.

''SEC. 204. IMPLEMENTATION

''(a) In General. - In closing or realigning a military installation under this title, the Secretary -

''(1) subject to the availability of funds authorized for and appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance and the availability of funds in the Account, may carry out actions necessary to implement such closure or realignment, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such military installation to another military installation;

''(2) subject to the availability of funds authorized for and appropriated to the Department of Defense for economic adjustment assistance or community planning assistance and the availability of funds in the Account, shall provide -

DCN: 12058

''(A) economic adjustment assistance to any community located near a military installation being closed or realigned; and

''(B) community planning assistance to any community located near a military installation to which functions will be transferred as a result of such closure or realignment, if the Secretary determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate; and

''(3) subject to the availability of funds authorized for and appropriated to the Department of Defense for environmental restoration and the availability of funds in the Account, may carry out activities for the purpose of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

''(b) Management and Disposal of Property. - (1) The Administrator of General Services shall delegate to the Secretary, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this title -

''(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

''(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484); and

''(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code.

''(2)(A) Subject to subparagraph (B), the Secretary shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with -

''(i) all regulations in effect on the date of the enactment of this title (Oct. 24, 1988) governing utilization of excess property and disposal of surplus property under the Federal Property and Administrative Services Act of 1949 (see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works); and

''(ii) all regulations in effect on the date of the enactment of this title governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

''(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

''(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

''(D) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this title, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

''(E) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this title, the Secretary shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

DCN: 12058

''(F) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) through (6).

''(3)(A) Not later than 6 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 (Nov. 30, 1993), the Secretary, in consultation with the redevelopment authority with respect to each military installation to be closed under this title after such date of enactment, shall -

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with -

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of -

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date referred to in subparagraph (A); or

''(IV) ninety days before the date of the closure of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this title as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this title to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any related personal property located at an installation to be closed under this title if the property -

''(i) is required for the operation of a unit, function, component,

DCN: 12058

weapon, or weapons system at another installation;

''(ii) 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);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v) (I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C) (i) and (D), the Secretary may carry out any activity referred to in subparagraph (C) (ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4) (A) The Secretary may transfer real property and personal property located at a military installation to be closed under this title to the redevelopment authority with respect to the installation.

''(B) (i) (I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

''(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

''(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this title will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure. The Secretary shall prescribe in the regulations under clause (i) (II) the manner of determining whether communities are eligible for the transfer of property under this clause.

''(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

''(C) (i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of

the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

''(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer personal property similar to such property (including property not located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

''(D) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(E) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5) (A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this title after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 (Nov. 30, 1993), or will accept transfer of any portion of such installation, are made not later than 6 months after such date of enactment.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

''(C) (i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this title as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

''(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

''(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 (Nov. 18, 1997) and ending on July 31,

DCN: 12058

2001.

''(6) (A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this title.

''(B) (i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this title, the Secretary shall -

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B) (ii), the Secretary of Housing and Urban Development shall -

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c) (1) (B) of such Act (42 U.S.C. 11411(c) (1) (B)); and

''(iv) make available with respect to each building and property the information referred to in section 501(c) (1) (C) of such Act in accordance with such section 501(c) (1) (C).

''(D) Any buildings and property included in a list published under subparagraph (C) (iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which -

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d) (2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e) (2) of such Act; and

''(iii) the Secretary of Health and Human Services -

''(I) completes all actions on the application in accordance with section 501(e) (3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F) (i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), and buildings and property referred to in subparagraph (B) (ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C),

DCN: 12058

or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of building and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act (42 U.S.C. 11411) while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) Except as provided in subparagraph (B) or (C), all proceeds -

''(i) from any transfer under paragraphs (3) through (6); and

''(ii) from the transfer or disposal of any other property or facility made as a result of a closure or realignment under this title,

SHALL BE DEPOSITED INTO THE ACCOUNT ESTABLISHED BY SECTION 207(A)(1).

''(B) In any case in which the General Services Administration is involved in the management or disposal of such property or facility, the Secretary shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

''(C)(i) If any real property or facility acquired, constructed,

DCN: 12058

or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this title, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in a reserve account established in the Treasury to be administered by the Secretary. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving -

- ''(I) commissary stores; and
- ''(II) real property and facilities for nonappropriated fund instrumentalities.

''(ii) The amount deposited under clause (i) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

''(iii) As used in this subparagraph:

- ''(I) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.
- ''(II) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.
- ''(III) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(8) (A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this title, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this title, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) Applicability of Other Law. - (1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to -

- ''(A) the actions of the Commission, including selecting the military installations which the Commission recommends for closure or realignment under this title, recommending any military installation to receive functions from an installation to be closed

or realigned, and making its report to the Secretary and the committees under section 203(b); and

''(B) the actions of the Secretary in establishing the Commission, in determining whether to accept the recommendations of the Commission, in selecting any military installation to receive functions from an installation to be closed or realigned, and in transmitting the report to the Committees referred to in section 202(a)(1).

''(2) The provisions of the National Environmental Policy Act of 1969 shall apply to the actions of the Secretary (A) during the process of the closing or realigning of a military installation after such military installation has been selected for closure or realignment but before the installation is closed or realigned and the functions relocated, and (B) during the process of the relocating of functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. In applying the provisions of such Act, the Secretary shall not have to consider -

''(i) the need for closing or realigning a military installation which has been selected for closure or realignment by the Commission;

''(ii) the need for transferring functions to another military installation which has been selected as the receiving installation; or

''(iii) alternative military installations to those selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), or with respect to any requirement of the Commission made by this title, of any action or failure to act by the Secretary during the closing, realigning, or relocating referred to in clauses (A) and (B) of paragraph (2), or of any action or failure to act by the Commission under this title, may not be brought later than the 60th day after the date of such action or failure to act.

''(d) Transfer Authority in Connection With Payment of Environmental Remediation Costs. - (1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this title that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that -

''(A) the costs of all environmental restoration, waste management,

DCN: 12058

and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a) (2) of such section 330.

''(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 (Nov. 30, 1993).

''(e) Transfer Authority in Connection With Construction or Provision of Military Family Housing. - (1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this title with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents. The Secretary may not select real property for transfer under this paragraph if the property is identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if -

''(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

''(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of the property or facilities agrees to pay to the Secretary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

''(3) Notwithstanding section 207(a) (7), the Secretary may deposit funds received under paragraph (2) (B) in the Department of Defense Family Housing Improvement Fund established under section 2883(a) of title 10, United States Code.

''(4) The Secretary shall submit to the appropriate committees of Congress a report describing each agreement proposed to be entered

DCN: 12058

into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 21-day period beginning on the date the appropriate committees of Congress receive the report regarding the agreement.

''(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.

''(f) Acquisition of Manufactured Housing. - (1) In closing or realigning any military installation under this title, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this title, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that -

''(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

''(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

''(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

''(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

''SEC. 205. WAIVER

''The Secretary may carry out this title without regard to -

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization Act; and

''(2) the procedures set forth in sections 2662 and 2687 of title 10, United States Code.

''SEC. 206. REPORTS

''(a) In General. - As part of each annual budget request for the Department of Defense, the Secretary shall transmit to the appropriate committees of Congress -

''(1) a schedule of the closure and realignment actions to be carried out under this title in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

''(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

''(b) Study. - (1) The Secretary shall conduct a study of the military installations of the United States outside the United States to determine if efficiencies can be realized through closure or realignment of the overseas base structure of the United States. Not later than October 15, 1988, the Secretary shall transmit a report of the findings and conclusions of such study to the Commission and to the Committees on Armed Services of the Senate

DCN: 12058

and the House of Representatives. In developing its recommendations to the Secretary under this title, the Commission shall consider the Secretary's study.

''(2) Upon request of the Commission, the Secretary shall provide the Commission with such information about overseas bases as may be helpful to the Commission in its deliberations.

''(3) The Commission, based on its analysis of military installations in the United States and its review of the Secretary's study of the overseas base structure, may provide the Secretary with such comments and suggestions as it considers appropriate regarding the Secretary's study of the overseas base structure.

''SEC. 207. FUNDING

''(a) Account. - (1) There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account' which shall be administered by the Secretary as a single account.

''(2) There shall be deposited into the Account -

''(A) funds authorized for and appropriated to the Account with respect to fiscal year 1990 and fiscal years beginning thereafter;

''(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the appropriate committees of Congress; and

''(C) proceeds described in section 204(b)(4)(A).

''(3)(A) The Secretary may use the funds in the Account only for the purposes described in section 204(a).

''(B) When a decision is made to use funds in the Account to carry out a construction project under section 204(a)(1) and the cost of the project will exceed the maximum amount authorized by law for a minor construction project, the Secretary shall notify in writing the appropriate committees of Congress of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

''(4) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this title, the Secretary shall transmit a report to the appropriate committees of Congress of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 204(a) during such fiscal year.

''(5)(A) Except as provided in subparagraph (B), unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this title shall be held in the Account until transferred by law after the appropriate committees of Congress receive the report transmitted under paragraph (6).

''(B) The Secretary may, after the termination of authority referred to in subparagraph (A), use any unobligated funds referred to in that subparagraph that are not transferred in accordance with that subparagraph to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

''(6) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this title, the Secretary shall transmit to the appropriate

DCN: 12058

committees of Congress a report containing an accounting of -

''(A) all the funds deposited into and expended from the

Account or otherwise expended under this title; and

''(B) any amount remaining in the Account.

''(7) Proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under this title shall be deposited directly into the Department of Defense Base Closure Account 1990 established by section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

''(b) Base Closure Account To Be Exclusive Source of Funds for Environmental Restoration Projects. - No funds appropriated to the Department of Defense may be used for purposes described in section 204(a)(3) except funds that have been authorized for and appropriated to the Account. The prohibition in the preceding sentence expires upon the termination of the authority of the Secretary to carry out a closure or realignment under this title.

''SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

''(a) Terms of the Resolution. - For purposes of section 202(b), the term 'joint resolution' means only a joint resolution which is introduced before March 15, 1989, and -

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Commission on Base Realignment and Closure established by the Secretary of Defense as submitted to the Secretary of Defense on ', the blank space being appropriately filled in; and

''(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Commission on Base Realignment and Closure.'.

''(b) Referral. - A resolution described in subsection (a), introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

''(c) Discharge. - If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) before March 15, 1989, such committee shall be, as of March 15, 1989, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) Consideration. - (1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which such Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration

DCN: 12058

of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

"(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

"(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

"(e) Consideration by Other House. - (1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

"(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

"(B) With respect to a resolution described in subsection (a) of the House receiving the resolution -

"(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

"(ii) the vote on final passage shall be on the resolution of the other House.

"(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

"(f) Rules of the Senate and House. - This section is enacted by Congress -

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"SEC. 209. DEFINITIONS

"In this title:

"(1) The term 'Account' means the Department of Defense Base Closure Account established by section 207(a)(1).

"(2) The term 'appropriate committees of Congress' means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives (Committee on

Armed Services of the House of Representatives now Committee on National Security).

''(3) The terms 'Commission on Base Realignment and Closure' and 'Commission' mean the Commission established by the Secretary of Defense in the charter signed by the Secretary on May 3, 1988, and as altered thereafter with respect to the membership and voting.

''(4) The term 'charter establishing such Commission' means the charter referred to in paragraph (3).

''(5) The term 'initiate' includes any action reducing functions or civilian personnel positions but does not include studies, planning, or similar activities carried out before there is a reduction of such functions or positions.

''(6) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Secretary of a military department.

''(7) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions.

''(8) The term 'Secretary' means the Secretary of Defense.

''(9) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

''(10) The term 'redevelopment authority', in the case of an installation to be closed under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

''(11) The term 'redevelopment plan' in the case of an installation to be closed under this title, means a plan that -

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse or redevelopment as a result of the closure of the installation.''

(For effective date of amendment by section 2813(d)(1) of Pub. L. 103-337 to section 209 of Pub. L. 100-526, set out above, see Effective Date of Amendment by Section 2813(d)(1) and (2) of Pub. L. 103-337 note set out above.)

(For effective date of amendment by section 344(a) of Pub. L. 102-190 to sections 204 and 209 of Pub. L. 100-526, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102-190 note set out above.)

(Section 2923(b)(2) of Pub. L. 101-510 provided that: ''The amendment made by paragraph (1) (amending section 207 of Pub. L. 100-526 set out above) does not apply with respect to the availability of funds appropriated before the date of the enactment of this Act (Nov. 5, 1990).''')

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2667, 2696, 2705, 2706, 2871 of this title; title 2 section 907c; title 5 sections 3341, 6304; title 29 section 1662d-1; title 40 sections 484, 485; title 42 section 9620; title 49 section 47118.

(d) TERMS.--(1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

(2) The Chairman of the Commission shall serve until the confirmation of a successor.

(e) MEETINGS.--(1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness, Sustainability, and Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(ii) The Chairman and the ranking minority party member of the Subcommittee on Military Installations and Facilities of the Committee on Armed Services of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

(f) VACANCIES.--A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

(g) PAY AND TRAVEL EXPENSES.--(1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314, of title 5, United States Code.

(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(h) DIRECTOR OF STAFF.--(1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive

Schedule under section 5315 of title 5, United States Code.

(i) STAFF.--(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may--

(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

(ii) review the preparation of such a report; or

(iii) approve or disapprove such a report.

(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

(A) There may not be more than 15 persons on the staff at any one time.

(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

(j) OTHER AUTHORITY.--(1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(2) The Commission may lease space and acquire personal property to the extent funds are available.

(k) FUNDING.--(1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100-526. Such funds shall remain available until expended.

(3)(A) The Secretary may transfer not more than \$300,000 from unobligated funds in the account referred to in subparagraph (B) for the purpose of assisting the Commission in carrying out its duties under this part during October, November, and December 1995. Funds transferred under the preceding sentence shall remain available until December 31, 1995.

(B) The account referred to in subparagraph (A) is the Department of Defense Base Closure Account established under section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(l) TERMINATION.--The Commission shall terminate on December 31, 1995.

(m) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS.--Section 1034 of title 10, United States Code, shall apply with respect to communications with the Commission.

SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS

(a) FORCE-STRUCTURE PLAN.--(1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

(2) Such plan shall include, without any reference (directly or indirectly) to military installations inside the United States that may be closed or realigned under such plan--

(A) a description of the assessment referred to in paragraph (1);

(B) a description (i) of the anticipated force structure during and at the end of such period for each military department (with specifications of the number and type of units in the active and reserve forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

(C) a description of the anticipated implementation of such force-structure plan.

(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

(b) SELECTION CRITERIA.--(1) The Secretary shall, by no later than December 31, 1990, publish in the *Federal Register* and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the *Federal Register* and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the *Federal Register*, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

(c) DOD RECOMMENDATIONS.--(1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 1, 1995, publish in the *Federal Register* and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

(3)(A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning--

(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

(4) In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

(5)(A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that persons knowledge and belief.

(B) Subparagraph (A) applies to the following persons:

(i) The Secretaries of the military departments.

(ii) The heads of the Defense Agencies.

(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

(6) Any information provided to the Commission by a person described in paragraph (5)(B) shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 24 hours after the submission of the information to the Commission.

(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.--(1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath. [*The preceding sentence shall apply with respect to all public hearings conducted by the Defense Base Closure and Realignment Commission after November 30, 1993.*]

(2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

(B) Subject to subparagraph (C), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission

determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission--

- (i) makes the determination required by subparagraph (B);
- (ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);
- (iii) publishes a notice of the proposed change in the *Federal Register* not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and
- (iv) conducts public hearings on the proposed change.

(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would--

- (i) add a military installation to the list of military installations recommended by the Secretary for closure;
- (ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or
- (iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(5) The Comptroller General of the United States shall--

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (C); and

(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

(e) REVIEW BY THE PRESIDENT.--(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of

such approval.

(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

(a) **IN GENERAL.**--Subject to subsection (b), the Secretary shall--

(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

(2) realign all military installations recommended for realignment by such Commission in each such report;

(3) carry out the privatization in place of a military installation recommended for closure or realignment by the Commission in the 2005 report only if privatization in place is a method of closure or realignment of the military installation specified in the recommendations of the Commission in such report and is determined by the Commission to be the most cost-effective method of implementation of the recommendation;

(4) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

(5) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

(b) **CONGRESSIONAL DISAPPROVAL.**--(1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908: disapproving such recommendations of the Commission before the earlier of--

(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

(B) the adjournment of Congress sine die for the session during which such report is transmitted.

(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of adjournment of

more than three days to a day certain shall be excluded in the computation of a period.

SEC. 2905. IMPLEMENTATION

(a) IN GENERAL.--(1) In closing or realigning any military installation under this part, the Secretary may—

(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

(B) provide--

(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation, if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account. [*Amendments to this subsection took effect on December 5, 1991.*]

(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.--(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part--

(A) the authority of the Administrator to utilize excess property under subchapter

II of chapter 5 of title 40, United States Code;

(B) the authority of the Administrator to dispose of surplus property under subchapter III of chapter 5 of title 40, United States Code;

(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code; and

(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

(2)(A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with--

(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary may, with the concurrence of the Administrator of General Services--

(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

(C) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(E) If a military installation to be closed, realigned, or placed in an inactive status under this part includes a road used for public access through, into, or around the installation, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering the continued availability of the road for public use after the installation is closed, realigned, or placed in an inactive status.

(3)(A) Not later than 6 months after the date of approval of the closure or realignment of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall--

(i) inventory the personal property located at the installation; and

(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with--

(i) the local government in whose jurisdiction the installation is wholly located; or

(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of--

(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

(III) twenty-four months after the date of approval of the closure or realignment of the installation; or

(IV) ninety days before the date of the closure or realignment of the installation.

(ii) The activities referred to in clause (i) are activities relating to the closure or realignment of an installation to be closed or realigned under this part as follows:

(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed or realigned under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

(E) This paragraph shall not apply to any personal property located at an installation to be closed or realigned under this part if the property--

(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

(ii) 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);

(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out

of such activity is in the national security interest of the United States.

(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this part to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

(B) With respect to military installations for which the date of approval of closure or realignment is after January 1, 2005, the Secretary shall seek to obtain consideration in connection with any transfer under this paragraph of property located at the installation in an amount equal to the fair market value of the property, as determined by the Secretary. The transfer of property of a military installation under subparagraph (A) may be without consideration if the redevelopment authority with respect to the installation—

(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of property under subparagraph (A) shall be used to support the economic redevelopment of, or related to, the installation; and

(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental policy act of 1969 (42 U.S.C. 4321 et seq.).

(C) For purposes of subparagraph (B), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

- (i) Road construction.
- (ii) Transportation management facilities.
- (iii) Storm and sanitary sewer construction.
- (iv) Police and fire protection facilities and other public facilities.
- (v) Utility construction.
- (vi) Building rehabilitation.
- (vii) Historic property preservation.
- (viii) Pollution prevention equipment or facilities.
- (ix) Demolition.
- (x) Disposal of hazardous materials generated by demolition.
- (xi) Landscaping, grading, and other site or public improvements.
- (xii) Planning for or the marketing of the development and reuse of the installation.

(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

(E)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this part (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government.

Subparagraph (B) shall apply to a transfer under this subparagraph.

(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

(iii) A lease under clause (i) may not require rental payments by the United States.

(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

(v) Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the installation, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

(II) firefighting or security-guard functions.

(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of subchapters II and III of chapter 5 of title 40, United States Code, if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

(H)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

(III) the terms of the modification do not compromise, waive, adjust, release, or reduce an right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act, with the depreciated value of the investment made

with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with section 2906(d).

(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

(I) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000, at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

(J) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed or realigned under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure or realignment of that installation.

(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure or realignment of the installation.

(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this part as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

(iii) This subparagraph shall apply during the period beginning on the date of the

enactment of the National Defense Authorization Act for Fiscal Year 1998 and ending on July 31, 2001.

(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence, see paragraph (7).

(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall--

(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

(ii) notify the Secretary of Defense of the buildings and property that are so identified;

(iii) publish in the *Federal Register* a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which--

(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

(iii) the Secretary of Health and Human Services—

(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

(II) approves the application under section 501(e) of such Act.

(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act while so available for a redevelopment authority.

(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

(7)(A) The disposal of buildings and property located at installations approved for closure

or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).

(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall--

(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

(iii) In providing assistance under clause (ii), a redevelopment authority shall—

(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure or realignment of the installation.

(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

(ii) The date specified under clause (i) shall be-

(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after the date of publication of such determination in a newspaper of general circulation in the communities in the vicinity of the installation under subparagraph (B)(i)(IV); and

(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall--

(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

(II) notify the Secretary of Defense of the date.

(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

(II) An assessment of the need for the program.

(III) 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.

(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

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

(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) 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.

(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent upon the decision regarding the disposal of the buildings and property covered by the agreements by the Secretary of Defense under subparagraph (K) or (L).

(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

(ii) A redevelopment authority shall include in an application under clause (i) the following:

(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless--

(I) 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 plan for the use and needs of the homeless in such communities;

(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

(III) 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;

(IV) 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; and

(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include--

(I) an explanation of that determination; and

(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to--

(I) revise the plan in order to address the determination; and

(II) submit the revised plan to the Secretary of Defense and the Secretary of Housing and Urban Development.

(ii) A redevelopment authority shall submit a revised plan under this subparagraph to such Secretaries, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation

meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall--

(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

(II) consult with the representatives referred to in subclause (I), 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;

(III) request that each such representative submit to that Secretary the items described in clause (ii); and

(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

(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 that Secretary 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.

(IV) A certification 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.

(iii) Not later than 90 days after the date of the receipt of a revised plan for an installation under subparagraph (J), the Secretary of Housing and Urban Development shall--

(I) notify the Secretary of Defense and the redevelopment authority concerned of the buildings and property at an installation under clause (i)(IV) that the Secretary of Housing and Urban Development determines are suitable for use to assist the homeless; and

(II) notify the Secretary of Defense of the extent to which the revised plan meets the criteria set forth in subparagraph (H)(i).

(iv)(I) Upon notice from the Secretary of Housing and Urban Development with respect to an installation under clause (iii), the Secretary of Defense shall dispose of buildings and property at the installation in consultation with the Secretary of Housing and Urban Development and the redevelopment authority concerned.

(II) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan submitted by the redevelopment authority for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation. The Secretary of Defense shall incorporate the notification of the Secretary of Housing and Urban Development under clause (iii)(I) as part of the proposed Federal action for the installation only to the extent, if any, that the Secretary of Defense considers such incorporation to be appropriate and consistent with the best and highest use of the installation as a whole, taking into consideration the redevelopment plan submitted by the redevelopment authority.

(III) The Secretary of Defense shall dispose of buildings and property under subclause (I) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give deference to the redevelopment plan submitted by the redevelopment authority for the installation.

(IV) The disposal under subclause (I) of buildings and property to assist the homeless shall be without consideration.

(V) In the case of a request for a conveyance under subclause (I) of buildings and property for public benefit under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K) or (L), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority 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. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure or realignment of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

(O) For purposes of this paragraph, the term "communities in the vicinity of the installation", in the case of an installation, means 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.

(P) For purposes of this paragraph, the term "other interested parties", in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.

(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.--(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or

realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider--

- (i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;
- (ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or
- (iii) military installations alternative to those recommended or selected.

(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

(d) WAIVER.--The Secretary of Defense may close or realign military installations under this part without regard to--

- (1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and
- (2) sections 2662 and 2687 of title 10, United States Code.

(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.--(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed, or realigned or to be realigned, under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection. The real property and facilities referred to in subparagraph (A) are also the real property and facilities located at an installation approved for closure or realignment under this part after 2001 that are available for purposes other than to assist the homeless.

(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that--

- (A) the costs of all environmental restoration, waste management, and

environmental compliance activities otherwise to be paid by the Secretary with respect to the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

(3) In the case of property or facilities covered by a certification under paragraph (2)(A), the Secretary may pay the recipient of such property or facilities an amount equal to the lesser of—

(A) the amount by which the costs incurred by the recipient of such property or facilities for all environmental restoration, waste, management, and environmental compliance activities with respect to such property or facilities exceed the fair market value of such property or facilities as specified in such certification; or

(B) the amount by which the costs (as determined by the Secretary) that would otherwise have been incurred by the Secretary for such restoration, management, and activities with respect to such property or facilities exceed the fair market value of such property or facilities as so specified

(4) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

(5) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(6) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330, except in the case of releases or threatened releases not disclosed pursuant to paragraph (4).

SEC. 2906. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990

(a) IN GENERAL.--(1) There is hereby established on the books of the Treasury an account to be known as the "Department of Defense Base Closure Account 1990" which shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account--

(A) funds authorized for and appropriated to the Account;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees;

(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation closed or realigned under this

part the date of approval of closure or realignment of which is before January 1, 2005; and

(D) proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(3) The Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code. Unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred by law after the congressional defense committees receive the final report transmitted under subsection (c)(2).

(b) USE OF FUNDS.--(1) The Secretary may use the funds in the Account only for the purposes described in section 2905 with respect to military installations the date of approval of closure or realignment of which is before January 1, 2005, or, after September 30, 1995, for environmental restoration and property management and disposal at installations closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note). After July 13, 2001, the Account shall be the sole source of Federal funds for environmental restoration, property management, and other caretaker costs associated with any real property at military installations closed or realigned under this part or such title II.

(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

(c) REPORTS.--(1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

(B) The report for a fiscal year shall include the following:

(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of--

(I) any failure to carry out military construction projects that were so proposed; and

(II) any expenditures for military construction projects that were not so proposed.

(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part with respect to military installations the date of approval of closure or realignment of which is before January 1, 2005, and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of--

(A) all the funds deposited into and expended from the Account or otherwise expended under this part with respect to such installations; and

(B) any amount remaining in the Account.

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.--(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part the date of approval of closure or realignment of which is before January 1, 2005, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

(3) The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving--

(A) commissary stores; and

(B) real property and facilities for nonappropriated fund instrumentalities.

(4) As used in this subsection:

(A) The term "commissary store funds" means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

(B) The term "nonappropriated funds" means funds received from a nonappropriated fund instrumentality.

(C) The term "nonappropriated fund instrumentality" means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—Except as provided in section 2906A(e) with respect to funds in the Department of

Defense Base Closure Account 2005 under section 2906A and except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905 (a)(1)(C). The prohibition in this subsection shall expire upon the closure of the Account under subsection (a)(3).

SEC. 2906A. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 2005.

(a) **IN GENERAL.**—(1) If the Secretary makes the certifications required under section 2912(b), there shall be established on the books of the Treasury an account to be known as the "Department of Defense Base Closure Account 2005" (in this section referred to as the "Account"). The Account shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account—

(A) funds authorized for and appropriated to the Account;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees; and

(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation that is closed or realigned under this part pursuant to a closure or realignment the date of approval of which is after January 1, 2005.

(3) The Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code. Unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred by law after the congressional defense committees receive the final report transmitted under subsection (c)(2),

(b) **USE OF FUNDS.**—(1) The Secretary may use the funds in the Account only for the purposes described in section 2905 with respect to military installations the date of approval of closure or realignment of which is after January 1, 2005.

(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

(c) **REPORTS.**—(1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part using amounts in the Account, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

(B) The report for a fiscal year shall include the following:

(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which finds were obligated for such expenditures.

(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of—

(I) any failure to carry out military construction projects that were so proposed; and

(II) any expenditures for military construction projects that were not so proposed.

(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part with respect to military installations the date of approval of closure or realignment of which is after January 1, 2005, and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

(A) all the funds deposited into and expended from the Account or otherwise expended under this part with respect to such installations; and

(B) any amount remaining in the Account.

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part the date of approval of closure or realignment of which is after January 1, 2005, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary.

(3) The Secretary may use amounts in the reserve account, without further appropriation, for the purpose of acquiring, constructing, and improving—

(A) commissary stores; and

(B) real property and facilities for nonappropriated fund instrumentalities.

(4) In this subsection, the terms "commissary store funds", "nonappropriated funds", and "nonappropriated fund instrumentality" shall have the meaning given those terms in section 2906(d)(4).

(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—Except as provided in section 2906(e) with respect to funds in the Department of Defense Base Closure Account 1990 under section 2906 and except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the closure of the Account under subsection (a)(3).

SEC. 2907. REPORTS

As part of the budget request for fiscal year 1993 and for each fiscal year thereafter for the Department of Defense, the Secretary shall transmit to the congressional defense committees of Congress--

(1) a schedule of the closure and realignment actions to be carried out under this part in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

(a) TERMS OF THE RESOLUTION.--For purposes of section 2904(b), the term "joint resolution" means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and--

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on _____", the blank space being filled in with the appropriate date; and

(3) the title of which is as follows: "Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.".

(b) REFERRAL.--A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

(c) DISCHARGE.--If the committee to which a resolution described in subsection (a) is referred has not reported such a resolution (or an identical resolution) by the end of the 20-day

period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.--(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.--(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution--

(i) the procedure in that House shall be the same as if no resolution had

been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.--This section is enacted by Congress--

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

(a) IN GENERAL.--Except as provided in subsection (c), during the period beginning on November 5, 1990, and ending on April 15, 2006, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

(b) RESTRICTION.--Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)

(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

(2) to carry out any closure or realignment of a military installation inside the United States.

(c) EXCEPTION.--Nothing in this part affects the authority of the Secretary to carry out

(1) closures and realignments under title II of Public Law 100-526; and

(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

SEC. 2910. DEFINITIONS

As used in this part:

(1) The term "Account" means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

(2) The term "congressional defense committees" means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(3) The term "Commission" means the Commission established by section 2902.

(4) The term "military installation" means 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 projects not under the primary jurisdiction or control of the Department of Defense. [*The preceding sentence shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 on that date.*]

(5) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(6) The term "Secretary" means the Secretary of Defense.

(7) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

(8) The term "date of approval", with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires. [*The date of approval of closure of any installation approved for closure before November 30, 1993 shall be deemed to be November 30, 1993.*]

(9) The term "redevelopment authority", in the case of an installation to be closed or realigned under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan. [*The above revision shall take effect as if included in the amendments made by section 2918 of Pub. L. 103-160.*]

(10) The term "redevelopment plan" in the case of an installation to be closed or realigned under this part, means a plan that--

(A) is agreed to by the local redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure or realignment of the installation.

(11) The term "representative of the homeless" has the meaning given such term in section 501(i)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

SEC. 2911. CLARIFYING AMENDMENT

Section 2687(e)(1) of title 10, United States Code, is amended--

- (1) by inserting "homeport facility for any ship," after "center,"; and
- (2) by striking out "under the jurisdiction of the Secretary of a military department" and inserting in lieu thereof "under the jurisdiction of the Department of Defense, including any leased facility,".

SEC. 2912. 2005 ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS.

(a) **FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY.**—

(1) **PREPARATION AND SUBMISSION.**—As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for fiscal year 2005, the Secretary shall include the following:

(A) A force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the 20-year period beginning with fiscal year 2005, the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period.

(B) A comprehensive inventory of military installations world-wide for each military department, with specifications of the number and type of facilities in the active and reserve forces of each military department.

(2) **RELATIONSHIP OF PLAN AND INVENTORY.**— Using the force-structure plan and infrastructure inventory prepared under paragraph (1), the Secretary shall prepare (and include as part of the submission of such plan and inventory) the following:

(A) A description of the infrastructure necessary to support the force structure described in the force-structure plan.

(B) A discussion of categories of excess infrastructure and infrastructure capacity.

(C) An economic analysis of the effect of the closure or realignment of military installations to reduce excess infrastructure.

(3) **SPECIAL CONSIDERATIONS.**—In determining the level of necessary versus excess infrastructure under paragraph (2), the Secretary shall consider the following:

(A) The anticipated continuing need for and availability of military installations outside the United States, taking into account current restrictions on the use of military installations outside the United States and the potential for future prohibitions or restrictions on the use of such military installations.

(B) Any efficiencies that may be gained from joint tenancy by more than one branch of the Armed Forces at a military installation.

(4) **REVISION.**—The Secretary may revise the force-structure plan and

infrastructure inventory; If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress not later than March 15, 2005. For purposes of selecting military installations for closure or realignment under this part in 2005, no revision of the force-structure plan or infrastructure inventory is authorized after that date.

(b) CERTIFICATION OF NEED FOR FURTHER CLOSURES AND REALIGNMENTS.—

(1) CERTIFICATION REQUIRED.—On the basis of the force-structure plan and infrastructure inventory prepared under subsection (a) and the descriptions and economic analysis prepared under such subsection, the Secretary shall include as part of the submission of the plan and inventory—

(A) a certification regarding whether the need exists for the closure or realignment of additional military installations; and

(B) if such need exists, a certification that the additional round of closures and realignments would result in annual net savings for each of the military departments beginning not later than fiscal year 2011.

(2) EFFECT OF FAILURE TO CERTIFY.—If the Secretary does not include the certifications referred to in paragraph (1), the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

(c) COMPTROLLER GENERAL EVALUATION.—

(1) EVALUATION REQUIRED.—If the certification is provided under subsection (b), the Comptroller General shall prepare an evaluation of the following:

(A) The force-structure plan and infrastructure inventory prepared under subsection (a) and the final selection criteria specified in section 2913, including an evaluation of the accuracy and analytical sufficiency of such plan, inventory, and criteria.

(B) The need for the closure or realignment of additional military installations.

(2) SUBMISSION.—The Comptroller General shall submit the evaluation to Congress not later than 60 days after the date on which the force-structure plan and infrastructure inventory are submitted to Congress.

(d) AUTHORIZATION OF ADDITIONAL ROUND; COMMISSION.—

(1) APPOINTMENT OF COMMISSION.—Subject to the certifications required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this part in 2005 by transmitting to the Senate, not later than March 15, 2005, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Closure and Realignment Commission.

(2) EFFECT OF FAILURE TO NOMINATE.—If the President does not transmit to the Senate the nominations for the Commission by March 15, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

(3) MEMBERS.—Notwithstanding section 2902(c)(1), the Commission appointed

under the authority of this subsection shall consist of nine members.

(4) TERMS; MEETINGS; TERMINATION.—Notwithstanding subsections (d), (e)(1), and (1) of section 2902, the Commission appointed under the authority of this subsection shall meet during calendar year 2005 and shall terminate on April 15, 2006.

(5) FUNDING.—If no funds are appropriated to the Commission by the end of the second session of the 108th Congress for the activities of the Commission in 2005, the Secretary may transfer to the Commission for purposes of its activities under this part in that year such funds as the Commission may require to carry out such activities. The Secretary may transfer funds under the preceding sentence from any funds available to the Secretary. Funds so transferred shall remain available to the Commission for such purposes until expended.

SEC. 2913. SELECTION CRITERIA FOR 2005 ROUND.

(a) FINAL SELECTION CRITERIA.—The final criteria to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 shall be the military value and other criteria specified in subsections (b) and (c).

(b) MILITARY VALUE CRITERIA.— The military value criteria are as follows:

(1) The current and future mission capabilities and the impact on operational readiness of the total force of the Department of Defense, including the impact on joint warfighting, training, and readiness.

(2) The availability and condition of land, facilities, and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.

(3) The ability to accommodate contingency, mobilization, surge, and future total force requirements at both existing and potential receiving locations to support operations and training.

(4) The cost of operations and the manpower implications.

(c) OTHER CRITERIA.—The other criteria that the Secretary shall use in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 are as follows:

(1) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

(2) The economic impact on existing communities in the vicinity of military installations.

(3) The ability of the infrastructure of both the existing and potential receiving communities to support forces, missions, and personnel.

(4) The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

(d) **PRIORITY GIVEN TO MILITARY VALUE.**—The Secretary shall give priority consideration to the military value criteria specified in subsection (b) in the making of recommendations for the closure or realignment of military installations.

(e) **EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS.**—The selection criteria relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations.

(f) **RELATION TO OTHER MATERIALS.**—The final selection criteria specified in this section shall be the only criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

(g) **RELATION TO CRITERIA FOR EARLIER ROUNDS.**—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.

SEC. 2914. SPECIAL PROCEDURES FOR MAKING RECOMMENDATIONS FOR REALIGNMENTS AND CLOSURES FOR 2005 ROUND; COMMISSION CONSIDERATION OF RECOMMENDATIONS.

(a) **RECOMMENDATIONS REGARDING CLOSURE OR REALIGNMENT OF MILITARY INSTALLATIONS.**—If the Secretary makes the certifications required under section 2912(b), the Secretary shall publish in the Federal Register and transmit to the congressional defense committees and the Commission, not later than May 16, 2005, a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary under section 2912 and the final selection criteria specified in section 2913.

(b) **PREPARATION OF RECOMMENDATIONS.**—

(1) **IN GENERAL.**—The Secretary shall comply with paragraphs (2) through (6) of section 2903(c) in preparing and transmitting the recommendations under this section. However, paragraph (6) of section 2903(c) relating to submission of information to Congress shall be deemed to require such submission within 48 hours.

(2) **CONSIDERATION OF LOCAL GOVERNMENT VIEWS.**—(A) In making recommendations to the Commission in 2005, the Secretary shall consider any notice received from a local government in the vicinity of a military installation that the government would approve of the closure or realignment of the installation,

(B) Notwithstanding the requirement in subparagraph (A), the Secretary shall make the recommendations referred to in that subparagraph based on the force-structure plan, infrastructure inventory, and final selection criteria otherwise applicable to such

recommendations.

(C) The recommendations shall include a statement of the result of the consideration of any notice described in subparagraph (A) that is received with respect to a military installation covered by such recommendations. The statement shall set forth the reasons for the result.

(d) COMMISSION REVIEW AND RECOMMENDATIONS.—

(1) IN GENERAL.—Except as provided in this subsection, section 2903(d) shall apply to the consideration by the Commission of the recommendations transmitted by the Secretary in 2005. The Commission's report containing its findings and conclusions, based on a review and analysis of the Secretary's recommendations, shall be transmitted to the President not later than September 8, 2005.

(2) AVAILABILITY OF RECOMMENDATIONS TO CONGRESS.—After September 8, 2005, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(3) LIMITATIONS ON AUTHORITY TO CONSIDER ADDITIONS TO CLOSURE OR REALIGNMENT LISTS.—The Commission may not consider making a change in the recommendations of the Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless, in addition to the requirements of section 2903(d)(2)(C)—

(A) the Commission provides the Secretary with at least a 15-day period, before making the change, in which to submit an explanation of the reasons why the installation was not included on the closure or realignment list by the Secretary; and

(B) the decision to add the installation for Commission consideration is supported by at least seven members of the Commission.

(4) TESTIMONY BY SECRETARY.—The Commission shall invite the Secretary to testify at a public hearing, or a closed hearing if classified information is involved, on any proposed change by the Commission to the Secretary's recommendations.

(5) REQUIREMENTS TO EXPAND CLOSURE OR REALIGNMENT RECOMMENDATIONS.—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless—

(A) at least two members of the Commission visit the military installation before the date of the transmittal of the report; and

(B) the decision of the Commission to make the change to recommend the closure of the military installation, the realignment of the installation, or the expanded realignment of the installation is supported by at least seven members of the Commission.

(6) COMPTROLLER GENERAL REPORT.—The Comptroller General report required

by section 2903(d)(5)(B) analyzing the recommendations of the Secretary and the selection process in 2005 shall be transmitted to the congressional defense committees not later than July 1, 2005.

(e) REVIEW BY THE PRESIDENT.—

(1) IN GENERAL.—Except as provided in this subsection, section 2903(e) shall apply to the review by the President of the recommendations of the Commission under this section, and the actions, if any, of the Commission in response to such review, in 2005. The President shall review the recommendations of the Secretary and the recommendations contained in the report of the Commission under subsection (d) and prepare a report, not later than September '23, 2005, containing the President's approval or disapproval of the Commission's recommendations.

(2) COMMISSION RECONSIDERATION.—If the Commission prepares a revised list of recommendations under section 2903(e)(3) in 2005 in response to the review of the President in that year under paragraph (1), the Commission shall transmit the revised list to the President not later than October 20, 2005.

(3) EFFECT OF FAILURE TO TRANSMIT.—If the President does not transmit to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) by November 7, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

(4) EFFECT OF TRANSMITTAL.—A report of the President under this subsection containing the President's approval of the Commission's recommendations is deemed to be a report under section 2903(e) for purposes of sections 2904 and 2908.

BASE REALIGNMENT AND CLOSURE (BRAC) 2005

April 1, 2004

I. REFERENCES.

A. Statutes:

1. Base Realignment and Closure Act of 1990. P.L. 101-510, as amended, 10 U.S.C. 2687 note.

B. Policy Guidance:

1. Department of Defense

- a. SECDEF Memo of Nov. 15, 2002, Transformation Through Base Realignment and Closure.
- b. USD(AT&L) Memo of Apr. 16, 2003, Transformation Through Base Realignment and Closure (BRAC 2005) Policy Memorandum One – Policy Responsibilities and Procedures.
- c. OASD/PA-PO Message of Nov. 20, 2003, Public Affairs Guidance (PAG) – Transformation Through Base Realignment and Closure (BRAC 2005)
- d. DOD Final Selection Criteria, 69 Fed. Reg. 6948, Feb. 12, 2004.

2. Department of the Navy

- a. SECNAV Memo of Nov. 25, 2002, Base Realignment and Closure (BRAC) 2005.
- b. SECNAV Memo of Jun. 27, 2003, Internal Control Plan for Management of the Department of the Navy 2005 Base Realignment and Closure (BRAC) Process – Policy Advisory Two.
- c. SECNAVNOTE 11000 of Mar. 9, 2004, Base Realignment and Closure.

3. Department of the Army
 - a. SECARMY Memo of Dec. 12, 2002, Transformation Through Base Realignment and Closure (BRAC) 2005.
4. Department of the Air Force
 - a. SECAF Memo of Nov. 26, 2002, Base Realignment and Closure.

II. HISTORY OF BASE CLOSURE INITIATIVES.

- A. Before 1977. Base Closure was a common occurrence. Concerns expressed about economic impact and fairness.
- B. 10 U.S.C. 2687 (P.L. 95-82, Aug. 1, 1977). Law restricted actions to effect or implement a closure or realignment of military installations. Law required: notice to Congress as part of the annual appropriations request process; submission of an evaluation of fiscal, economic, budgetary, environmental, strategic, and operational consequences of the closure or realignment; and a waiting period.
- C. Defense Authorization Amendments and Base Closure and Realignment Act (P.L. 100-526, Oct. 24, 1988; 10 U.S.C. 2687 note). Established the 1988 Base Closure Round. The Base Closure Commission, appointed by the Secretary of Defense (SECDEF), chose the bases to be closed or realigned. SECDEF approved the Commission list and forwarded to Congress. Became law if Congress did not enact a resolution of disapproval.
- D. Defense Base Closure and Realignment Act of 1990 (P.L. 101-510, as amended; 10 U.S.C. 2687 note). Established the 1991, 1993, and 1995 Base Closure Rounds. SECDEF driven process with independent Base Closure Commission appointed by the President.
- E. Results. Four previous BRAC Rounds resulted in 97 major closures:
 - BRAC 88 – 16 total (4 Navy, 5 Air Force, 7 Army)
 - BRAC 91 – 26 total (8 Navy, 1 USMC, 13 Air Force, 4 Army)
 - BRAC 93 – 28 total (19 Navy, 1 USMC, 6 Air Force, 1 Army, 1 DLA)
 - BRAC 95 – 27 total (9 Navy, 5 Air Force, 11 Army, 2 DLA)
- F. Defense Base Closure and Realignment Act of 1990 was amended by the FY 2002 Department of Defense (DOD) Authorization Act (P.L. 107-107) to authorize the 2005 BRAC Round.

III. BRAC 2005.

A. Goals.

1. **Elimination of Excess Capacity.** Free up resources currently devoted to operation, sustainment, and recapitalization of excess capacity.
2. **Transformation by Rationalizing Infrastructure with Defense Strategy.** A means to reconfigure current infrastructure into one in which operational capacity maximizes both warfighting capability and efficiency.

B. Key similarities with BRAC 95.

1. BRAC process is the exclusive authority for selecting military installations in the United States for closure or realignment.
2. All military installations considered equally regardless of consideration under previous rounds of BRAC.
3. All recommendations must be based on data that is certified to be accurate and complete.
4. SECDEF makes recommendations for closure and realignment of military installations. SECDEF recommendations are reviewed by an independent Base Closure Commission appointed by the President. Commission can revise SECDEF's recommendations if they find substantial deviation from the Force Structure Plan and final selection criteria. President reviews Commission's recommendations and either approves initial or revised recommendations. Recommendations become binding unless Congress enacts resolution of disapproval within 45 legislative days.

C. Key differences from BRAC 95.

1. Recommendations based on 20-year force structure plan, worldwide infrastructure inventory, and requirements report.
2. SECDEF must certify to Congress that the need exists for additional closures and realignments and that it will result in annual net savings for each military department by FY 2011.

3. Prior selection criteria inapplicable. Selection criteria to be developed by DOD but some statutory requirements. Military Value shall be the primary consideration in making recommendations for closure and realignment.
4. Must consider notice from local government that would approve of closure and realignment.
5. May recommend that installation be placed in an inactive status.
6. Privatization allowed only if specified in recommendation and the Commission finds it is most cost-effective method of implementation.
7. Commission can add bases only if determination is made that change is consistent with force structure plan and selection criteria, SECDEF is given the opportunity to explain why base was not included, 7 of 9 Commissioners vote to add, and at least 2 Commissioners visit the installation.
8. Explicit consideration of "jointness." DOD will analyze common business oriented support functions. MILDEPS will analyze service unique functions.
9. Multiple go/no-go points. Failure to meet certain deadlines or take certain actions terminates process.

D. Final Selection Criteria.

1. Military Value.
 - a. The current and future mission capabilities and the impact on operational readiness of the Department of Defense's total force, including the impact on joint warfighting, training, and readiness.
 - b. The availability and condition of land, facilities and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.
 - c. The ability to accommodate contingency, mobilization, and future total force requirements at both existing and

potential receiving locations to support operations and training.

- d. The cost of operations and the manpower implications.
2. Other Considerations.
 - a. The extent and timing of potential costs and savings, including the number of years, beginning with the date of closure or realignment, for the savings to exceed the costs.
 - b. The economic impact on existing communities in the vicinity of military installations.
 - c. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions, and personnel.
 - d. The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance.
- E. DOD BRAC Structure.
1. Infrastructure Executive Council (IEC) – policy-making and oversight body for the entire BRAC 2005 process. Military Department (MILDEP) Secretaries and Chiefs are members.
 2. Infrastructure Steering Group (ISG) – oversees joint cross-service analysis of common business oriented functions and ensures integration of that process with the MILDEP analysis of all other functions. MILDEP Assistant Secretaries (I&E) and Vice Chiefs are members.
 3. Joint Cross Service Groups (JCSGs) – responsible for analyzing common business oriented and support functions and examining them for ways to realize consolidation and elimination of excess infrastructure. There are seven JCSGs: Education and Training; Headquarters and Support; Industrial; Intelligence; Medical; Supply and Storage; and Technical.
- F. MILDEP BRAC Structure. Service specific. Department of the Navy (DON) structure is provided below as an example.
1. Infrastructure Evaluation Group (IEG) – responsible for developing recommendations for closure and realignment of DoN

military installations and ensuring that factors of concern to the operational commanders are considered. Chaired by ASN(I&E) with Flag/GO/SES members.

2. Infrastructure Analysis Team (IAT) - responsible for developing analytical methodologies, developing joint and cross-service opportunities, collecting data and performing analyses, and presenting the analytical results to the IEG for evaluation. Deputy Assistant Secretary of the Navy (Infrastructure Strategy and Analysis) (DASN(IS&A)) directs a staff of 93 military and civilian personnel representing various disciplines.
3. Functional Advisory Board (FAB) – reports directly to and coordinates with the IEG to ensure that DON position on common business oriented functions is clearly articulated and understood throughout the BRAC process and that DON leadership is informed of JCSG matters that will be addressed to the IEC. Members are the Navy and Marine Corps representatives to the JCSGs.

G. BRAC 2005 Timeline.

- | | |
|--------------------|--|
| Until May 16, 2005 | <u>DOD Deliberative Process.</u> DOD undertakes internal data gathering and analytic process necessary to formulate recommendations and meet statutory reporting requirements. |
| Feb. 12, 2004 | <u>Final Selection Criteria.</u> Date SECDEF published final selection criteria. |
| Mar. 2004 | <u>Force Structure Plan and Infrastructure Inventory.</u> As part of the FY 05 Budget justification documents submitted to Congress, SECDEF must submit: a 20 Year Force Structure Plan; a world-wide infrastructure inventory for each MILDEP; and a description of the infrastructure necessary to support the 20 year force structure plan.

SECDEF must also include a certification whether the need exists for an additional round of base closure and realignment and, if so, that the additional closures and realignments would result in net savings for each MILDEP beginning not later than FY 2011. |

SECDEF made this certification on Mar. 23, 2004.

- Mar. 15, 2005 Nomination of Commissioners. Date by which President must transmit to the Senate nominations of Commissioners. **Failure to transmit these nominations will result in the termination of the BRAC 2005 process.**
- May 16, 2005 SECDEF Recommendations. Date by which SECDEF must transmit to Congress and the Commission a list of military installations that SECDEF recommends for closure or realignment.
- Sep. 8, 2005 Commission Recommendations. Date by which Commission must transmit its report recommending closure and realignments to the President.
- Sep. 23, 2005 President's Approval or Disapproval of the Commission's recommendations. If the President approves the Commission's recommendations and transmits them to Congress, the recommendations become binding 45 legislative days after transmittal unless Congress enacts a joint resolution of disapproval.
- Oct. 20, 2005 Commission's Revised Recommendations. If the President disapproved (in whole or in part) the Commission's recommendations, the Commission must submit revised recommendations to the President by this date.
- Nov. 7, 2005 President's Approval or Disapproval of Revised Recommendations. Date by which the President must approve the Commission's revised recommendations and transmit them to Congress. The recommendations become binding 45 legislative days after transmittal unless Congress enacts a joint resolution of disapproval.
- Failure by the President to approve and transmit either the initial or revised Commission recommendations by the above-referenced dates will result in a termination of the BRAC 2005 process.**

IV. ETHICS ISSUES RELATED TO BRAC 2005.

A. Applicability of Ethics Laws and Regulations to BRAC.

All ethics laws and regulations fully apply to DOD employees involved in the BRAC 2005 process. There are no BRAC specific exceptions.

B. BRAC Unique Ethics Concerns.

1. Dynamics of Base Closure. Local communities and other parties are interested in seeing that their base is not included in the BRAC 2005 list. As a result, they will seek to improve relations with the base and take steps designed to enhance the survivability of the base, a.k.a. "BRAC proofing." In so doing, they may seek the assistance of the base and its employees who they assume share a common interest. While we continually seek to improve relations with local communities and many base employees will no doubt personally support the community's objective, DOD employees may not officially support the community's "Save the Base" efforts. Ethics rules may also limit an employee's personal participation in these activities.
2. Official Participation in Activities of "Save the Base" Organizations. As a matter of policy, DOD personnel may not participate, in their official capacity, in activities of any organization that has as its purpose, either directly or indirectly, insulating bases from realignment or closure. This policy is aimed at ensuring the fairness and rigor of the BRAC deliberative process. Invitations to participate in such organizations should be discussed with appropriate ethics counselors. SECDEF MSG, dated Nov. 20, 2003, Subj: Public Affairs Guidance (PAG) – Transformation through Base Realignment and Closure (BRAC 2005); SECNAV Memo of Nov. 25, 2002, Base Realignment and Closure (BRAC) 2005.
 - a. Participation would arguably include attending meetings and similar events, becoming members, voting, or otherwise officially supporting the efforts of such an organization.
 - b. Participation would arguably not include providing such organizations with installation tours, neutral (not BRAC related) mission or similar briefings, or other information that would be provided to any other organization in the normal course of business. Watch for prohibited political

activities during election year 2004. See section V.A.3, below.

3. Liaison or Representation Role. In a liaison or representational role, DOD personnel may attend meetings with state and local officials, or other organizations that may seek to develop plans or programs to improve the ability of installations to discharge their national security and defense missions. DOD officials may not manage or control such organizations or efforts. SECDEF MSG, dated Nov. 20, 2003, Subj: Public Affairs Guidance (PAG) – Transformation through Base Realignment and Closure (BRAC 2005); SECNAV Memo of Nov. 25, 2002, Base Realignment and Closure (BRAC) 2005.
 - a. Liaisons are appointed by the DOD Component command or organization (vice the non-Federal entity (NFE)) and only where there is a determination that such representation will serve a “significant and continuing DOD interest.” DOD 5500.7-R, Joint Ethics Regulation (JER), section 3-201.
 - b. Liaisons must be aware of and comply with the limitations in JER 3-201 when dealing with such outside organizations, i.e., liaisons serve as part of their official duties, represent only DOD interests to the NFE in an advisory capacity, may not participate in the management or control of the NFE, and must make clear that the opinions expressed by the liaison do not bind DOD or any component.
4. Distinguishing Between the Two Types of Organizations.
 - a. Permissible liaison organizations typically have a historical existence and a broad civic purpose, e.g., a chamber of commerce or similar civic group, local military affairs committees, and local land use/zoning and planning boards.
 - b. Permissible liaison organizations may have or form subunits that focus on BRAC or revise their charter or mission to include BRAC Proofing local installations. Employees must limit their participation to appropriate activities of these organizations.

C. Potential Problem Areas.

1. Gifts.

- a. To Employees. 5 C.F.R. 2635.202 generally prohibits an employee from directly or indirectly soliciting or accepting a gift that is either from a prohibited source or given because of the employee's official position. Employees involved in the BRAC process must closely examine any gift offered by a person that could be affected by the BRAC 2005 process, as they may be a prohibited source or offering the gift because of the employee's BRAC duties.
- b. To Agencies. Based on past experience, State and local governments may offer unsolicited gifts of money or material assistance to military installations during the time that the BRAC deliberative process is underway, e.g., offer of funds for infrastructure improvements. Acceptance of such gifts could create an expectation in the donor that the gift will result in favorable treatment for their local base and could call into question the integrity of the BRAC decision-making process. Such offers should be carefully examined prior to acceptance. SECNAV Memo of 25 Nov 02.

2. Personal Participation in NFEs.

- a. As a general rule, DOD employees may voluntarily participate in the activities of an NFE in their personal capacity provided they act exclusively outside the scope of their official positions. JER 3-300. Similarly, DOD employees may become members of and participate in the management of an NFE in a personal capacity (provided the management position was not offered because of the employee's DOD assignment or position). JER 3-301.
- b. DOD employees that have a direct role in the BRAC process must be extremely careful before considering participation in an NFE that may be involved in or affected by the BRAC process.

3. Approval of Outside Employment/Activities.

- a. Employees who are financial disclosure filers (SF 278 or OGE 450) must obtain approval from their supervisor

before engaging in business activities or compensated outside employment with a prohibited source. JER 2-206 and 3-306.

- b. A supervisor may also require an employee to report outside employment or activity prior to engaging in such employment or activity and may prohibit it if he believes that it will detract from readiness or pose a security risk. JER 2-303; 3-306; and 10 U.S.C. 973(a).

4. Conflicts of Interest.

- a. Employees are precluded from participating in an official capacity in any matter that could have a direct and predictable effect on the employee's financial interest or an interest imputed to him, i.e., the financial interest of a spouse or dependent child, an entity in which the employee serves as an officer of employee, or an entity with whom the employee is negotiating for employment or has an arrangement concerning prospective employment. 18 U.S.C. 208; 5 C.F.R. 2635.402.
- b. Regulatory provisions extend this restriction to financial interests of members of the employee's household or persons with which the employee has a covered relationship, e.g., an organization in which the employee is seeking employment, is an active member, or served as an officer within the last year. 5 C.F.R. 2635.502.

5. Representational Restrictions.

Employees must be reminded that with a few exceptions, they are generally prohibited from acting as an agent/attorney or representative (with or without compensation) for another person before any agency or department of the United States in a matter in which the United States is a party or has a substantial interest. 18 U.S.C. 203 and 205.

6. Misuse of Official Position.

Employees involved in the BRAC process must be aware of the limitations on the use of their official position. The following issues could arise, particularly if the employee is engaged in outside employment or activities with an organization that could be affected by the BRAC process.

- a. Endorsement. An employee may not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise. 5 C.F.R. 2635.702(c) and JER 3-209.
 - b. Use of non-public Information. Protection of BRAC information and data during the deliberative process is crucial to ensuring a fair and impartial analysis. Employees may not allow the improper use of nonpublic information to further their own private interests or those of another, whether through advice or recommendation, or by knowing unauthorized disclosure. 5 C.F.R. 2635.703. Release of information should be through official public affairs channels only. Idle speculation as to prospective realignments and closures should be discouraged.
 - c. Use of Government Property. Employees have a duty to protect and conserve Government property and shall not use it for other than authorized purposes. 5 C.F.R. 2635.704.
 - d. Use of Official Time. Employees may not use official time (their own or that of a subordinate) for the performance of activities not required in the performance of official/authorized duties. 5 C.F.R. 2635.705.
7. Dealing with Former Senior DOD Officials.
- a. Many former senior officials (i.e., retired Flag/GOs and career/noncareer SES) are now serving as employees of or consultants to BRAC communities. This raises a couple of concerns.
 - (1) Employees must be reminded that these former senior officials are not entitled to any preferential treatment during the BRAC process, e.g., access to individuals or non-public information.
 - (2) Employees must be aware that these former senior officials may also be subject to the one-year cooling off period imposed by 18 U.S.D.C. 207(c), i.e., former senior officials are prohibited for a period of one year from leaving their senior position from knowingly making, with the intent to influence, any communication to or appearance before an employee of the Department in which they last

served if that communication or appearance is made on behalf of any other person (other than the United States) in connection with any matter in which the former employee seeks official action from the current employee.

V. MISCELLANEOUS ISSUES.

A. Interactions with Congress.

1. Personal Communications.

- a. Like all citizens, DOD employees (including military personnel) may contact members of Congress with respect to BRAC or other matters of interest. In doing so, they must act in a personal capacity, i.e., off-duty, using their own resources, and not using their official title or position.
- b. Employees must not engage in activities that could violate the Anti-Lobby Act (18 USC 1913). It prohibits the use of appropriated funds for substantial agency grass-roots lobbying in which appeals are made to members of the public to contact their elected officials in favor or opposition to legislation pending before Congress. There are also restrictions on the use of appropriated funds for "publicity and propaganda" purposes or "influencing congressional action" on legislation or appropriations matters pending before Congress. See, sections 8001 and 8012, P.L. 108-87, FY 04 DOD Appropriations Act.

2. Official Communications.

All official communications between the Military Departments and Congress should be through the Military Department's Office of Legislative Affairs.

3. Congressional Visits and Similar Activities.

- a. As a matter of long-standing policy, DOD personnel acting in their official capacities may not engage in any activities that could be construed as associating DOD with any partisan candidate, cause or issue. Because 2004 is an election year, and BRAC 2005 is clearly an important issue for politicians, political activity issues are certain to arise, e.g., candidate visits to installations, media coverage of

such visits, support for political events, and use of installations for political or campaign events.

- b. Comprehensive guidance on these matters can be found in OASD/PA Message of Dec. 5, 2003, DOD Public Affairs Guidance Concerning Political Campaigns and Elections.

B. Interactions with the Media.

1. BRAC is a contentious and controversial topic. Unauthorized discussion or dissemination of information or speculation regarding potential realignments and closures by DOD personnel and support contractors is prohibited. OASD(PA) is the sole releasing authority for information on BRAC 2005 to the news media.
2. Commanding Officers and Public Affairs Officers must be prepared to respond to questions and objectively communicate information about the BRAC process. Requests for information about BRAC should be coordinated through your public affairs office. See OASD/PA-PO Message of Nov. 20, 2003, Public Affairs Guidance (PAG) – Transformation Through Base Realignment and Closure (BRAC 2005), for approved questions and answers.

C. Access to BRAC 2005 Information.

All requests for release of BRAC 2005 data and materials, including those under the Freedom of Information Act, received prior to SECDEF forwarding his realignment and closure recommendations to the Defense Base Closure and Realignment Commission (which must occur not later than May 16, 2005) shall be forwarded to the Military Department BRAC authority concerned.

V. CONCLUSION.

- A. Because of the potential impact that closures and realignments of military installations can have upon DOD Components and local communities, BRAC is a subject of intense interest to a number of stakeholders. Accordingly, there is a heightened risk that potentially affected organizations and employees will engage in activities aimed at “saving” their base. These activities could result in ethical violations. Equally important, these activities could undermine the integrity of the BRAC 2005 process.

- B. Ethics counselors need to recognize these risks and be proactive. They must provide employees with the necessary information and training to effectively deal with ethical issues that arise during the BRAC 2005 process. Ethics counselors must make themselves available and encourage employees to seek ethics advice before taking action.

PRESS**RELEASE**www.IllinoisAttorneyGeneral.gov

For Immediate Release
Contact: Melissa Merz
312-814-3118
877-844-5461 (TTY)
May 10, 2005

MADIGAN TO SUE DEPARTMENT OF DEFENSE IF ILLINOIS GUARD BASES ARE ON CLOSURE LIST

Chicago -- Attorney General Lisa Madigan today said she will file a federal lawsuit on behalf of Gov. Rod Blagojevich if any of Illinois' National Guard bases are slated for closure on an independent Base Closure and Realignment Commission (BRAC) list. The Pentagon is expected Friday to release its list of recommended base closures. BRAC will come up with a final list.

Many bases across the country, including two bases in Illinois – an Air National Guard base in Springfield and an Air National Guard base in Peoria – possibly could be on the final list, Madigan said. However, she noted, a federal law prevents closure of Air or Army National Guard bases in a state without the consent of its governor. Based on this law and the fact that Blagojevich has fought any such closures, should any Illinois bases be on the final BRAC list, Madigan would file a lawsuit in federal court against the Department of Defense to stop the closure or closures.

“Federal law is clear: no National Guard base closures without the consent of the Governor,” Madigan said. “As Attorney General, I will seek to uphold this law and protect these bases should it become necessary.”

The 183rd Fighter Wing is located at Abraham Lincoln Capital Airport in Springfield. The 182nd Airlift Wing is located at the Greater Peoria Regional Airport in Peoria. Scott Air Force Base, an active duty base in Belleville, has an Air Guard component, the 126th Air Refueling Wing. However, Scott Air Force Base generally is considered an active duty base versus a National Guard base that would be covered by the federal law.

Madigan has worked closely with members of the state's congressional delegation to prevent base closures in the state, including U.S. Sens. Dick Durbin and Barack Obama, U.S. Rep. Ray LaHood and U.S. House Speaker Dennis Hastert. Madigan has been asked by Blagojevich and the Springfield and Peoria mayors to issue a legal opinion as to whether any such base closures in Illinois would be prohibited by federal law.

“My administration has been delivering the very strong message that all our military bases need to continue doing what they do best, which is serving our country with distinction. From traveling to the Pentagon for several meetings, to extensive analysis of ways to improve these military facilities, to asking the Attorney General to advise us on potential legal options – we are pursuing every possible avenue to keep them open,” Blagojevich said.

-more-

Blagojevich continued, "If BRAC includes one of our National Guard Bases on its closure list, we will take our case to the courtroom," said Blagojevich.

"Attorney General Madigan believes as I do that the law is our side on the question of who has authority over National Guard bases," Durbin said. "I respect her legal opinion and appreciate her commitment to continue to fight for the Air National Guard Bases in Springfield and Peoria. I hope the Department of Defense will follow clear federal law on this matter, but it's reassuring to know that our Illinois Attorney General is ready to act if any unlawful closures are proposed."

"I support any and all efforts to keep Illinois' bases open. These bases are vital to our national security and to the economic security of the communities around them," Obama said.

"I commend Attorney General Madigan for her quick action on this matter," LaHood said. "The Attorney General and the members of the Illinois congressional delegation are committed to doing everything we can to keep these vital Illinois military bases open. Bases such as the 182nd Airlift Wing in Peoria and the 183rd Fighter Wing in Springfield, both in my Congressional District, are much too important to the military mission of the country and the economy of our state to be closed under BRAC. I am hopeful these bases will not be on the closure list, but I am pleased the Attorney General will take additional action if needed."

Source: [Legal](#) > [Federal Legal - U.S.](#) > [United States Code Service \(USCS\) Materials](#) > **United States Code Service - Titles 1 through 50**

TOC: [United States Code Service - Titles 1 through 50](#) > /.../ > [CHAPTER 159. REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY](#) > **§ 2687. Base closures and realignments**

Terms: **"base closure" w/100 300** ([Edit Search](#))

10 USCS § 2687

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*** CURRENT THROUGH P.L. 109-12, APPROVED 5/5/05

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART IV. SERVICE, SUPPLY, AND PROCUREMENT
CHAPTER 159. REAL PROPERTY; RELATED PERSONAL
PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

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10 USCS § 2687 (2005)

§ 2687. Base closures and realignments

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement--

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies,

unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation referred to in such subsection may be taken unless and until--

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, as part of an annual request for authorization of appropriations to such Committees, of the proposed closing or realignment and submits with the notification an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment; and

(2) a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation referred to in clause (1) have been

submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

(d) (1) After the expiration of the period of time provided for in subsection (b)(2) with respect to the closure or realignment of a military installation, funds which would otherwise be available to the Secretary to effect the closure or realignment of that installation may be used by him for such purpose.

(2) Nothing in this section restricts the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title [10 USCS § 2807].

(e) In this section:

(1) The term "military installation" means 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, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(2) The term "civilian personnel" means direct-hire, permanent civilian employees of the Department of Defense.

(3) The term "realignment" includes any action which both reduces and relocates functions and 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 causes.

(4) The term "legislative day" means a day on which either House of Congress is in session.

History:

(Added Aug. 1, 1977, P.L. 95-82, Title VI, § 612(a), 91 Stat. 379; Sept. 8, 1978, P.L. 95-356, Title VIII, § 805, 92 Stat. 586; July 12, 1982, P.L. 97-214, § 10(a)(8), 96 Stat. 175; Oct. 19, 1984, P.L. 98-525, Title XIV, § 1405(41), 98 Stat. 2624; Nov. 8, 1985, P.L. 99-145, Title XII, Part A, § 1202(a), 99 Stat. 716; Dec. 4, 1987, P.L. 100-180, Div A, Title XII, Part D, § 1231(17), 101 Stat. 1161; Nov. 5, 1990, P.L. 101-510, Div B, Title XXIX, Part A, § 2911, 104 Stat. 1819; Feb. 10, 1996, P.L. 104-106, Div A, Title XV, § 1502(a)(1), 110 Stat. 502; Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle G, § 1067(1), 113 Stat. 774.)

History; Ancillary Laws and Directives:

- 1. Amendments
- 2. Short titles
- 3. Other provisions

1. Amendments:

1978. Act Sept. 8, 1978, in subsec. (d)(1)(B), substituted "three hundred" for "five hundred".

1982. Act July 12, 1982 (effective 10/1/82, as provided by § 12(a) of such Act, which appears as 10 USCS § 2801 note), in subsec. (d)(1), substituted the introductory provisions for provisions which read: " 'Military installation' means any camp, post, station, base, yard, or other facility under the authority of the Department of Defense--".

1 of 1 DOCUMENT

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*** CURRENT THROUGH P.L. 109-12, APPROVED 5/5/05 ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART IV. SERVICE, SUPPLY, AND PROCUREMENT
CHAPTER 159. REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS
PROPERTY

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

10 USCS § 2662 (2005)

§ 2662. Real property transactions: reports to congressional committees

(a) General notice and wait requirements.

(1) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until the Secretary submits a report, subject to paragraph (3), to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(A) An acquisition of fee title to any real property, if the estimated price is more than \$ 750,000.

(B) A lease of any real property to the United States, if the estimated annual rental is more than \$ 750,000.

(C) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than \$ 750,000.

(D) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than \$ 750,000.

(E) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than \$ 750,000.

(F) Any termination or modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the use of the property by the military department.

(2) If a transaction covered by subparagraph (A) or (B) of paragraph (1) is part of a project, the report shall include a summary of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made. The report required by this subsection concerning any report of excess real property described in subparagraph (E) of paragraph (1) shall contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such property for other real property authorized to be acquired for military purposes and has determined that the property proposed to be declared excess is not suitable for such purpose.

(3) The authority of the Secretary of a military department to enter into a transaction described in paragraph (1) commences only after--

(A) the end of the 30-day period beginning on the first day of the month with respect to which the report containing the facts concerning such transaction, and all other such proposed transactions for that month, is submitted under paragraph (1); or

(B) the end of the 14-day period beginning on the first day of that month when a copy of the report is provided in an electronic medium pursuant to section 480 of this title [10 USCS § 480] on or before the first day of that month.

(4) The report for a month under this subsection may not be submitted later than the first day of that month.

10 USCS § 2662

(b) Annual reports on certain minor transactions. The Secretary of each military department shall submit annually to the congressional committees named in subsection (a) a report on transactions described in subsection (a) that involve an estimated value of more than \$ 250,000, but not more than \$ 750,000.

(c) Geographic scope; excepted projects. This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) Statements of compliance in transaction instruments. A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(e) Notice and wait regarding leases of space for DoD by GSA. No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of \$ 750,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of the Department of Defense, until the end of the 30-day period beginning on the date on which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a) or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title [10 USCS § 480].

(f) Reports on transactions involving intelligence components. Whenever a transaction covered by this section is made by or on behalf of an intelligence component of the Department of Defense or involves real property used by such a component, any report under this section with respect to the transaction that is submitted to the congressional committees named in subsection (a) shall be submitted concurrently to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(g) Exceptions for transactions for war and certain emergency and other operations.

(1) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection, and the reporting requirement set forth in subsection (e) shall not apply with respect to a real property transaction otherwise covered by that subsection, if the Secretary concerned determines that the transaction is made as a result of any of the following:

(A) A declaration of war.

(B) A declaration of a national emergency by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.).

(C) A declaration of an emergency or major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(D) The use of the militia or the armed forces after a proclamation to disperse under section 334 of this title [10 USCS § 334].

(E) A contingency operation.

(2) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection if the Secretary concerned determines that--

(A) an event listed in paragraph (1) is imminent; and

(B) the transaction is necessary for purposes of preparation for such event.

(3) Not later than 30 days after entering into a real property transaction covered by paragraph (1) or (2), the Secretary concerned shall submit to the committees named in subsection (a) a report on the transaction. The report shall set forth any facts or information which would otherwise have been submitted in a report on the transaction under subsection (a) or (e), as the case may be, but for the operation of paragraph (1) or (2).

HISTORY:

(Aug. 10, 1956, ch 1041, § 1, 70A Stat. 147; June 25, 1959, P.L. 86-70, § 6(c), 73 Stat. 142; June 8, 1960, P.L. 86-500, Title V, § 511(1), 74 Stat. 186; July 12, 1960, P.L. 86-624, § 4(c), 74 Stat. 411; Oct. 27, 1971, P.L. 92-145, Title VII, § 707(5), 85 Stat. 412; Oct. 25, 1972, P.L. 92-545, Title VII, § 709, 86 Stat. 1154; Dec. 27, 1974, P.L. 93-552,

10 USCS § 2662

Title VI, § 610, 88 Stat. 1765; Oct. 7, 1975, P.L. 94-107, Title VI, § 607(5), (6), 89 Stat. 566; Sept. 30, 1976, P.L. 94-431, Title VI, § 614, 90 Stat. 1367; Oct. 10, 1980, P.L. 96-418, Title VIII, § 805, 94 Stat. 1777; Sept. 29, 1988, P.L. 100-456, Div B, Title XXVIII, Part A, § 2803, 102 Stat. 2115; Nov. 5, 1990, P.L. 101-510, Div A, Title XIII, Part B, § 1311(6), 104 Stat. 1670; Oct. 24, 1992, P.L. 102-496, Title IV, § 403(a)(1), (2)(A), 106 Stat. 3185; Feb. 10, 1996, P.L. 104-106, Div A, Title XV, § 1502(a)(23), Div D, Title XLIII, Subtitle B, § 4321(b)(21), 110 Stat. 505, 673; Oct. 17, 1998, P.L. 105-261, Div B, Title XXVIII, Subtitle B, § 2811, 112 Stat. 2204; Oct. 5, 1999, P.L. 106-65, Div A, Title X, Subtitle G, § 1067(1), 113 Stat. 774; Oct. 30, 2000, P.L. 106-398, § 1, 114 Stat. 1654.)

(As amended Nov. 24, 2003, P.L. 108-136, Div A, Title X, Subtitle D, § 1031(a)(27), 117 Stat. 1598; Oct. 28, 2004, P.L. 108-375, Div A, Title X, Subtitle I, § 1084(d)(22), 118 Stat. 2062.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2662(a)	40:551.	Sept. 28, 1951, ch. 434,
2662(b)	40:552.	Secs. 601-604, 65 Stat.
2662(c)	40:553.	365, 366.
2662(d)	40:554.	

In subsection (a), the words "must come to an agreement . . . before entering into any of the following transactions by or for the use of that department:" are substituted for the words "shall come into agreement . . . with respect to those real-estate actions by or for the use of the military departments . . . that are described in subsection (a)-(e) of this section, and in the manner therein described". The last sentence is substituted for the last sentence of 40:551(a) and 40:551(b).

In subsection (a)(4), the words "or another military department" are substituted for the words "including transfers between the military departments". The words "under the jurisdiction of the military departments" are omitted as surplusage.

In subsection (b), the words "more than \$ 5,000 but not more than \$ 25,000" are substituted for the words "between \$ 5,000 and \$ 25,000". The words "shall report" are substituted for the words "will, in addition, furnish * * * reports".

In subsection (c), the words "the United States, Alaska, Hawaii" are substituted for the words "the continental United States, the Territory of Alaska, the Territory of Hawaii", since, as defined in section 101(1) of this title, "United States" includes the States and the District of Columbia; and "Territories" include Alaska and Hawaii.

In subsection (d), the words "A statement . . . that the requirements of this section have been met" are substituted for the words "A recital of compliance with this chapter . . . to the effect that the requirements of this chapter have been complied with". The words "in the alternative", "or lease", and "evidence thereof" are omitted as surplusage.

Explanatory notes:

The amendments made by § 1 of Act Oct. 30, 2000, P.L. 106-398, are based on § 2811 of Subtitle B of Title XXVIII of Division B of H.R. 5408 (114 Stat. 1654A-416), as introduced on Oct. 6, 2000, which was enacted into law by such § 1.

Amendments:

1959. Act June 25, 1959, in subsec. (c), deleted "Alaska," following "United States,".

1960. Act June 8, 1960, in the section catchline, substituted "Reports to the Armed Services Committees" for "agreement with Armed Services Committees; reports"; in the preliminary matter of subsec. (a), substituted "may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives:" for "must come to an agreement with the Committees on Armed Services of the Senate and the House of Representatives before entering into any of the following transactions by or for the use of that department:"; in subsec. (a)(1) through (5), substituted "\$ 50,000" for "\$ 25,000"; in the concluding matter of subsec. (a), substituted "if a transaction covered by clause (1) or (2) is part of a project, the

10 USCS § 2662

than \$ 500,000"; and, in subsec. (e), substituted "\$ 750,000" for "\$ 500,000" and substituted "the end of the 30-day period beginning on the date on which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a) or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title." for "the expiration of thirty days from the date upon which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a).".

2004. Act Oct. 28, 2004, in subsec. (a)(2), substituted "shall include a summary" for "must include a summarization", and inserted "of paragraph (1)".

Other provisions:

Provisions as to closing of facilities; reports to the Congress repealed. Act Sept. 16, 1965, P.L. 89-188, Title VI, § 611, 79 Stat. 818, as amended Sept. 12, 1966, P.L. 89-568, Title VI, § 613, 80 Stat. 757, formerly classified as a note to this section, was repealed by Act July 12, 1982, P.L. 97-214, § 7(7) in part, 96 Stat. 173, effective Oct. 1, 1982, as provided by § 12(a) of such Act, which appears as *10 USCS § 2801* note. It provided for a report to Congress and a waiting period before closing of Defense Department facilities.

Closing of facilities; closures or realignments publicly announced after September 30, 1977. Act Aug. 1, 1977, P.L. 95-82, Title VI, § 612(c), 91 Stat. 380, provided: "Section 611 of the Military Construction Authorization Act, 1966 (Public Law 89-188; *10 U.S.C. 2662* note) [note to this section], and section 612 of the Military Construction Authorization Act, 1977 (Public Law 94-431; 90 Stat. 1366) [unclassified], shall be inapplicable in the case of any closure of a military installation, and any realignment with respect to a military installation, which is first publicly announced after September 30, 1977.".

Reduction or realignment of training bases. Act Oct. 20, 1978, P.L. 95-485, Title VI, § 602, 92 Stat. 1619, provided: "(a) Notwithstanding any other provision of law, no action may be taken to effect or implement any substantial reduction of the training base (as defined in subsection (c)) or any substantial force structure realignment of the training base planned as a part of the fiscal year 1979 Defense manpower program unless and until the provisions of subsection (b) are complied with.

"(b) No action described in subsection (a) with respect to a substantial reduction or realignment of the training base may be taken unless and until--

"(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services and Appropriations of the Senate and House of Representatives in writing of the specific reduction or realignment proposed;

"(2) The Secretary of Defense or the Secretary of the military department concerned certified that such reduction or realignment is in the best interest of the national security and provides for the most cost effective and efficient management of the training base, both in time of peace and in ability to meet mobilization requirements; and

"(3) a period of thirty legislative days expires following the date on which the notification and certification referred to in clauses (1) and (2) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement such reduction or realignment.

For the purpose of clause (3), a legislative day is a day in which either House of Congress is in session.

"(c) For the purposes of this section, the term 'training base' means the composite of installations, posts, camps, stations, and bases that have as a primary or secondary mission the conduct of formal entry level, advanced individual, or specialty training."

Termination of Trust Territory of the Pacific Islands. For termination of Trust Territory of the Pacific Islands, see note preceding *48 USCS § 1681*.

NOTES:

Code of Federal Regulations:

Department of the Navy--Disposition of property, 32 CFR Part 736.

Related Statutes & Rules:

This section is referred to in *10 USCS § 2667*; *42 USCS § 3374*.

Interpretive Notes and Decisions: 1. Purpose 2. Relationship with other laws 3. Applicability to inverse condemnation 4. Sufficiency of compliance 5. Declaratory or injunctive relief

1. Purpose

10 USCS § 2662

report must include a summarization of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made" for "If a transaction covered by clause (1) or (2) is part of a project, the agreement must be based on the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made"; in subsec. (b), substituted "\$ 50,000" for "\$ 25,000"; and, in subsec. (c), deleted ", Hawaii," after "United States".

Act July 12, 1960, in subsec (c), purported to delete, but such amendment could not be executed because it had ", Hawaii.", which had already been made by Act June 8, 1960.

1971. Act Oct. 27, 1971, in subsec. (a)(3), inserted "or license", and substituted "estimated annual fair market rental value" for "estimated annual rental".

1972. Act Oct. 25, 1972 added subsec. (e).

1974. Act Dec. 27, 1974 purported to add para. (6) at the end of subsec. (a); however, the amendment was executed by inserting para. (6) preceding the concluding matter of such subsection in order to effectuate the probable intent of Congress.

1975. Act Oct. 7, 1975, in subsec. (b), substituted "annually" for "quarterly"; and substituted subsec. (c) for former subsec. (c), which read: "This section applies only to real property in the United States and Puerto Rico. It does not apply to real property for river and harbor projects or flood-control projects, or to leases of Government-owned real property for agricultural or grazing purposes."

1976. Act Sept. 30, 1976, in the concluding matter of subsec. (a), added, "The report required by this subsection to be submitted to the Committees on Armed Services of the Senate and House of Representatives concerning any report of excess real property described in clause (5) shall contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such property for other real property authorized to be acquired for military purposes and has determined that the property proposed to be declared excess is not suitable for such purpose."

1980. Act Oct. 10, 1980, in subssecs. (a), (b) and (e), substituted "\$ 100,000" for "\$ 50,000", wherever it appears.

1988. Act Sept. 29, 1988 (effective 10/1/88 as provided by § 2702 of such Act, which appears as *10 USCS § 2391* note), in subsec. (a), in paras. (1)-(5); and in subssecs. (b) and (e), substituted "\$ 200,000" for "\$ 100,000".

1990. Act Nov. 5, 1990, in subsec. (b), substituted "the small purchase threshold under section 2304(g) of this title" for "\$ 5,000".

1992. Act Oct. 24, 1992 substituted the section heading for one which read: "2662. Real property transactions: Reports to the Armed Services Committees"; and added subsec. (f).

1996. Act Feb. 10, 1996, in subsec. (a), in the introductory matter, substituted "the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives" for "the Committees on Armed Services of the Senate and House of Representatives" and, in the concluding matter, deleted "to be submitted to the Committees on Armed Services of the Senate and House of Representatives" following "subsection"; in subsec. (b), substituted "shall submit annually to the congressional committees named in subsection (a) a report" for "shall report annually to the Committees on Armed Services of the Senate and the House of Representatives"; in subsec. (e), substituted "the congressional committees named in subsection (a)" for "the Committees on Armed Services of the Senate and the House of Representatives"; and, in subsec. (f), substituted "the congressional committees named in subsection (a) shall" for "the Committees on Armed Services of the Senate and the House of Representatives shall".

Such Act further (effective and applicable as provided by § 4401 of such Act, which appears as *41 USCS § 251* note), in subsec. (b), substituted "simplified acquisition threshold" for "small purchase threshold".

1998. Act Oct. 17, 1998, in subssecs. (a)-(f), added the headings; and added subsec. (g).

1999. Act Oct. 5, 1999, in subsec. (a), substituted "Committee on Armed Services" for "Committee on National Security" preceding "of the House".

2000. Act Oct. 30, 2000, in subsec. (a), substituted "\$ 500,000" for "\$ 200,000" wherever appearing; in subsec. (b), substituted "specified in section 4(11) of the Office of Federal Procurement Policy Act (*41 U.S.C. 403(11)*)," for "under section 2304(g) of this title" and substituted "\$ 500,000" for "\$ 200,000"; and, in subsec. (e), substituted "\$ 500,000" for "\$ 200,000".

2003. Act Nov. 24, 2003, in subsec. (a), in the introductory matter, inserted "(1)" before "The Secretary", and substituted "the Secretary submits a report, subject to paragraph (3)" for "after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted", redesignated paras. (1)-(6) as subparagraphs (A)-(F), respectively, and, in subparagraphs (A)-(E) as redesignated, substituted "\$ 750,000" for "\$ 500,000", redesignated the concluding matter as new para. (2) and, in such paragraph, substituted "subparagraph (A) or (B) of paragraph (1)" for "clause (1) or (2)" and substituted "subparagraph (E)" for "clause (5)", and added paras. (3) and (4); in subsec. (b), substituted "more than \$ 250,000, but not more than \$ 750,000" for "more than the simplified acquisition threshold specified in section 4(11) of the Office of Federal Procurement Policy Act (*41 U.S.C. 403(11)*), but not more

10 USCS § 2662

Legislative history of 10 USCS § 2662 indicates that its purpose was to give Congress effective review of enumerated transactions consistent with power to control and dispose of federal property. *San Francisco v United States* (1977, ND Cal) 443 F Supp 1116, 11 Env't Rep Cas 1065, 8 ELR 20386, aff'd on other grounds (1980, CA9 Cal) 615 F2d 498, 14 Env't Rep Cas 1347, 27 CCF P 80272, 10 ELR 20346.

2. Relationship with other laws

As to disposal of federal real-property interests, exclusion for military and naval reservations under predecessor of 40 USCS § 1303 merely incorporated congressional reporting requirements of 10 USCS § 2662; Congress did not seek to prescribe different method of disposing of surplus or excess real-property interests held by Defense Department than for those held by other departments, but in § 2662 imposed "report and wait" condition in conjunction with usual disposal responsibility entrusted to General Services Administration, so that disposition of surplus military property was governed by usual provisions (predecessors of 40 USCS § § 101, 102, 541 et seq.), so long as reporting requirements of § 2662 were met. *United States v 434.00 Acres of Land* (1986, CA11 Ga) 792 F2d 1006.

3. Applicability to inverse condemnation

Congress did not intend by 10 USCS § 2662 to disauthorize governmental activities that might effect "inverse condemnation" at cost exceeding \$ 50,000, if otherwise authorized, and section has no effect on authority of federal agents to take actions that might be held to result in "inverse condemnation". *Armijo v United States* (1981) 229 Ct Cl 34, 663 F2d 90.

4. Sufficiency of compliance

In condemnation action where Armed Services committee was content to approve Navy housing project without passing on particular parcel of land to be chosen, sufficient compliance with statutory condition of predecessor to 10 USCS § 2662 was made. *United States v 37.6 Acres of Land, etc.* (1954, DC Conn) 126 F Supp 789.

5. Declaratory or injunctive relief

Federal District Court does not have power, under Military Construction Authorization Act of 1967, 80 Stat 757 (10 USCS § 2662 note) to provide declaratory or injunctive relief against closing of military arsenal until such time as Secretary of Defense or secretary of military department gives Congress full report of facts and justification for such closing pursuant to such Act; Congress did not intend that federal court, rather than Congress itself, should determine what constitutes, in any given case, full report to Congress that Military Construction Authorization Act of 1967 requires. *National Asso. of Government Employees, Inc. v Schlesinger* (1975, ED Pa) 397 F Supp 894, aff'd without op (1975, CA3 Pa) 523 F2d 1051.

Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Pub. L. 100-526)

Enacted October 24, 1988

As amended by the National Defense Authorization Acts for Fiscal Years 1991 (Pub. L. 101-510), 1992/1993 (Pub. L. 102-190), 1993 (Pub. L. 102-484), 1994 (Pub. L. 103-160), 1995 (Pub. L. 103-337), 1996 (Pub. L. 104-106), 1997 (Pub. L. 104-201), and 1998 (Pub. L. 105-85), and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421)

SEC. 1. SHORT TITLE

This Act may be cited as the "Defense Authorization Amendments and Base Closure and Realignment Act".

TITLE II--CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

SEC. 202. CONDITIONS

SEC. 203. THE COMMISSION

SEC. 204. IMPLEMENTATION

SEC. 205. WAIVER

SEC. 206. REPORTS

SEC. 207. FUNDING

SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

SEC. 209. DEFINITIONS

SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

The Secretary shall--

- (1) close all military installations recommended for closure by the Commission on Base Realignment and Closure in the report transmitted to the Secretary pursuant to the charter establishing such commission;
- (2) realign all military installations recommended for realignment by such commission in such report; and
- (3) initiate all such closures and realignments no later than September 30, 1991, and complete all closures and realignments no later than September 30, 1995, except that no such closure or realignment may be initiated before January 1, 1990.

SEC. 202. CONDITIONS

(a) IN GENERAL.--The Secretary may not carry out any closure or realignment of a military installation under this title unless-

(1) no later than January 16, 1989, the Secretary transmits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Defense will implement, all of the military installation closures and realignments recommended by the Commission in the report referred to in section 201(1);

(2) the Commission has recommended, in the report referred to in section 201(1), the closure or realignment, as the case may be, of the installation, and has transmitted to the Committees on Armed Services of the Senate and the House of Representatives a copy of such report and the statement required by section 203(b)(2); and

(3) the Secretary of Defense has transmitted to the Commission the study required by section 206(b).

(b) JOINT RESOLUTION.--The Secretary may not carry out any closure or realignment under this title if, within the 45-day period beginning on March 1, 1989, a joint resolution is enacted, in accordance with the provisions of section 208, disapproving the recommendations of the Commission. The days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of such 45-day period.

(c) TERMINATION OF AUTHORITY.--(1) Except as provide in paragraph (2), the authority of the Secretary to carry out any closure or realignment under this title shall terminate on October 1, 1995.

(2) The termination of authority set forth in paragraph (1) shall not apply to the authority of the Secretary to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

SEC. 203. THE COMMISSION

(a) MEMBERSHIP.--The Commission shall consist of 12 members appointed by the Secretary of Defense.

(b) DUTIES.--The Commission shall--

(1) transmit the report referred to in section 201(1) to the Secretary no later than December 31, 1988, and shall include in such report a description of the Commission's recommendations of the military installations to which functions will be transferred as a result of the closures and realignments recommended by the Commission; and

(2) on the same date on which the Commission transmits such report to the Secretary, transmit to Committees on Armed Services of the Senate and the House of Representatives--

(A) a copy of such report; and

(B) a statement certifying that the Commission has identified the military installations to be closed or realigned by reviewing all military installations inside the United States, including all military installations under construction and all those planned for construction.

(c) **STAFF.**--Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988 in any capacity other than as an employee of the Commission.

SEC. 204. IMPLEMENTATION

(a) **IN GENERAL.**--In closing or realigning a military installation under this title, the Secretary--

(1) subject to the availability of funds authorized for and appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance and the availability of funds in the Account, may carry out actions necessary to implement such closure or realignment, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such military installation to another military installation;

(2) subject to the availability of funds authorized for and appropriated to the Department of Defense for economic adjustment assistance or community planning assistance and the availability of funds in the Account, shall provide--

(A) economic adjustment assistance to any community located near a military installation being closed or realigned, and

(B) community planning assistance to any community located near a military installation to which functions will be transferred as a result of such closure or realignment, if the Secretary determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate; and

(3) subject to the availability of funds authorized for and appropriated to the Department of Defense for environmental restoration and the availability of funds in the Account, may carry out activities for the purposes of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

(b) **MANAGEMENT AND DISPOSAL OF PROPERTY.**--(1) The Administrator of General Services shall delegate to the Secretary, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this title--

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484); and

(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code.

(2)(A) Subject to subparagraph (B), the Secretary of Defense shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with--

(i) all regulations in effect on the date of the enactment of this title governing utilization of excess property and disposal of surplus property under the Federal

Property and Administrative Services Act of 1949; and

(ii) all regulations in effect on the date of the enactment of this title governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

(D) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this title, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

(E) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this title, the Secretary shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(F) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) through (6).

(3)(A) Not later than 6 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994, the Secretary, in consultation with the redevelopment authority with respect to each military installation to be closed under this title after such date of enactment, shall--

(i) inventory the personal property located at the installation; and

(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with--

(i) the local government in whose jurisdiction the installation is wholly located; or

(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that

clause until the earlier of--

(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

(III) twenty-four months after the date referred to in subparagraph (A); or

(IV) ninety days before the date of the closure of the installation.

(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this title as follows:

(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this title to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

(E) This paragraph shall not apply to any related personal property located at an installation to be closed under this title if the property--

(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

(ii) 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);

(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed under this title to the redevelopment authority with respect to the installation.

(B)(i)(I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this title will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure. The Secretary shall prescribe in the regulations under clause (i)(II) the manner of determining whether communities are eligible for the transfer of property under this clause.

(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

(C)(i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer personal property similar to such property (including property not

located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

(D) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

(E) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this title after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994, or will accept transfer of any portion of such installation, are made not later than 6 months after such date of enactment.

(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this title as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 and ending on July 31, 2001.

(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this title.

(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this title, the Secretary shall--

(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B) (i), the Secretary of Housing and Urban Development shall--

(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

(ii) notify the Secretary of Defense of the buildings and property that are so identified;

(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which--

(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

(iii) the Secretary of Health and Human Services--

(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

(II) approves the application under section 501(e) of such Act.

(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

(III) In the case of building and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act while so available for a redevelopment authority.

(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

(7)(A) Except as provided in subparagraph (B) or (C), all proceeds--

(i) from the transfer under paragraphs (3) through (6); and

(ii) from the transfer or disposal of any other property or facility made as a result of a closure or realignment under this title,

shall be deposited into the Account established by section 207(a)(1).

(B) In any case in which the General Services Administration is involved in the management or disposal of such property or facility, the Secretary shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

(C)(i) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this title, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in a reserve account established in the Treasury to be administered by the Secretary. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving--

(I) commissary stores; and

(II) real property and facilities for nonappropriated fund instrumentalities.

(ii) The amount deposited under clause (i) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

(iii) As used in this subparagraph:

(I) The term "commissary store funds" means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

(II) The term "nonappropriated funds" means funds received from a nonappropriated fund instrumentality.

(III) The term "nonappropriated fund instrumentality" means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this title, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this title, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

(c) APPLICABILITY OF OTHER LAW.--(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to--

(A) the actions of the Commission, including selecting the military installations which the Commission recommends for closure or realignment under this title, recommending any military installation to receive functions from an installation to be closed or realigned, and making its report to the Secretary and the committees under section 203(b); and

(B) the actions of the Secretary in establishing the Commission, in determining whether to accept the recommendations of the Commission, in selecting any military installation to receive functions from an installation to be closed or realigned, and in transmitting the report to the Committees referred to in section 202(a)(1).

(2) The provisions of the National Environmental Policy Act of 1969 shall apply to the actions of the Secretary (A) during the process of the closing or realigning of a military installation after such military installation has been selected for closure or realignment but before the installation is closed or realigned and the functions relocated, and (B) during the process of the relocating of functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. In applying the provisions of such Act, the Secretary shall not have to consider--

(i) the need for closing or realigning the military installation which has been selected for closure or realignment by the Commission;

(ii) the need for transferring functions to another military installation which has been

selected as the receiving installation; or

(iii) alternative military installations to those selected.

(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), or with respect to any requirement of the Commission made by this title, of any action or failure to act by the Secretary during the closing, realigning, or relocating referred to in clauses (A) and (B) of paragraph (2), or of any action or failure to act by the Commission under this title, may not be brought later than the 60th day after the date of such action or failure to act.

(d) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.--(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620 (h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this title that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that--

(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the

Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994.

(e) TRANSFER AUTHORITY IN CONNECTION WITH CONSTRUCTION OR PROVISION OF MILITARY FAMILY HOUSING.--(1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this title with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents. The Secretary may not select real property for transfer under this paragraph if the property is identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation.

(2) A transfer of real property or facilities may be made under paragraph (1) only if--

(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of the property or facilities agrees to pay to the Secretary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

(3) Notwithstanding section 207(a)(7), the Secretary may deposit funds received under paragraph (2)(B) in the Department of Defense Family Housing Improvement Fund established under section 2883(a) of title 10, United States Code.

(4) The Secretary shall submit to the appropriate committees of Congress a report describing each agreement proposed to be entered into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 21-day period beginning on the date the appropriate committees of Congress receive the report regarding the agreement.

(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.

(f) ACQUISITION OF MANUFACTURED HOUSING.--(1) In closing or realigning any military installation under this title, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this title, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that--

(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

SEC. 205. WAIVER

The Secretary of Defense may carry out this title without regard to--

(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization Act; and

(2) the procedures set forth in sections 2662 and 2687 of title 10, United States Code.

SEC. 206. REPORTS

(a) IN GENERAL.--As part of each annual budget request for the Department of Defense, the Secretary shall transmit to the appropriate committees of Congress--

(1) a schedule of the closure and realignment actions to be carried out under this title in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

(b) STUDY.--(1) The Secretary shall conduct a study of the military installations of the United States outside the United States to determine if efficiencies can be realized through closure or realignment of the overseas base structure of the United States. Not later than October 15, 1988, the Secretary shall transmit a report of the findings and conclusions of such study to the Commission and to the Committees on Armed Services of the Senate and the House of Representatives. In developing its recommendations to the Secretary under this title, the Commission shall consider the Secretary's study.

(2) Upon request of the Commission, the Secretary shall provide the Commission with such information about overseas bases as may be helpful to the Commission in its deliberations.

(3) The Commission, based on its analysis of military installations in the United States and its

review of the Secretary's study of the overseas base structure, may provide the Secretary with such comments and suggestions as it considers appropriate regarding the Secretary's study of the overseas base structure.

SEC. 207. FUNDING

(a) ACCOUNT.--(1) There is hereby established on the books of the Treasury an account to be known as the "Department of Defense Base Closure Account" which shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account--

(A) funds authorized for and appropriated to the Account with respect to fiscal year 1990 and fiscal years beginning thereafter;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the appropriate committees of Congress; and

(C) proceeds described in section 204(b)(4)(A).

(3)(A) The Secretary may use the funds in the Account only for the purposes described in section 204(a).

(B) When a decision is made to use funds in the Account to carry out a construction project under section 204(a)(1) and the cost of the project will exceed the maximum amount authorized by law for a minor construction project, the Secretary shall notify in writing the appropriate committees of Congress of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

(4) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this title, the Secretary shall transmit a report to the appropriate committees of Congress of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 204(a) during such fiscal year.

(5) (A) Except as provided in subparagraph (B), unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this title shall be held in the Account until transferred by law after the appropriate committees of Congress receive the report transmitted under paragraph (6).

(B) The Secretary may, after the termination of authority referred to in subparagraph (A), use any unobligated funds referred to in that subparagraph that are not transferred in accordance with that subparagraph to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

(6) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this title, the Secretary shall transmit to the appropriate committees of Congress a report containing an accounting of--

(A) all the funds deposited into and expended from the Account or otherwise expended under this title; and

(B) any amount remaining in the Account.

(7) Proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under this title shall be deposited directly into the Department of Defense Base Closure Account 1990 established by section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(b) BASE CLOSURE ACCOUNT TO BE EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.--No funds appropriated to the Department of Defense may be used for purposes described in section 204(a)(3) except funds that have been authorized for and appropriated to the Account. The prohibition in the preceding sentence expires upon the termination of the authority of the Secretary to carry out a closure or realignment under this title. [*Section 207 (b) does not apply with respect to the availability of funds appropriated before November 5, 1990.*]

SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

(a) TERMS OF THE RESOLUTION.--For purposes of section 202(b), the term "joint resolution" means only a joint resolution which is introduced before March 15, 1989, and--

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Commission on Base Realignment and Closure established by the Secretary of Defense as submitted to the Secretary of Defense on _____", the blank space being appropriately filled in; and

(3) the title of which is as follows: "Joint resolution disapproving the recommendations of the Commission on Base Realignment and Closure.".

(b) REFERRAL.--A resolution described in subsection (a), introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

(c) DISCHARGE.--If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) before March 15, 1989, such committee shall be, as of March 15, 1989, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.--(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further

consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which such Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.--(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution--

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.--This section is enacted by Congress--

(1) as an exercise of the rulemaking power of the Senate and House of Representatives,

respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 209. DEFINITIONS

In this title:

(1) The term "Account" means the Department of Defense Base Closure Account established by section 207(a)(1).

(2) The term "appropriate committees of Congress" means the Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives.

(3) The terms "Commission on Base Realignment and Closure" and "Commission" mean the Commission established by the Secretary of Defense in the charter signed by the Secretary on May 3, 1988, and as altered thereafter with respect to the membership and voting.

(4) The term "charter establishing such Commission" means the charter referred to in paragraph (3).

(5) The term "initiate" includes any action reducing functions or civilian personnel positions but does not include studies, planning, or similar activities carried out before there is a reduction of such functions or positions.

(6) The term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Secretary of a military department.

(7) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions.

(8) The term "Secretary" means the Secretary of Defense.

(9) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

(10) The term "redevelopment authority", in the case of an installation to be closed under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan. [*The above revision shall take effect as if included in the amendments made by section 2918 of P.L. 103-160.*]

(11) The term "redevelopment plan" in the case of an installation to be closed under this title,

means a plan that--

(A) is agreed to by the redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse or redevelopment as a result of the closure of the installation.

Last Updated 12/30/97

AFBCA External Affairs

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Acts Which Authorize the Secretary of the Army to Acquire Real Property and Interests Therein

A-1. Annual Military Construction Authorization Acts

These Acts contain authorization for the acquisition of lands and rights and interests thereto or therein, at specified installations and facilities or for specified military purposes. The acquisitions are accomplished by donation, purchase, exchange of Government-owned lands, or other means.

A-2. Armed Forces Reserve Facilities

The National Defense Facilities Act of 1950, as amended (10 U.S.C. 18233), authorizes the acquisition of real estate by purchase, lease, gift, exchange or transfer for Armed Forces Reserve Facilities.

A-3. School, hospital, library, museum, cemetery, or other institution or organization

10 U.S.C. 2601 authorizes acquisition of real or personal property by gift, devise or bequest made on condition that it be used for the benefit of, or in connection with, the establishment, operation, maintenance, or administration of any school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Department of the Army.

A-4. Contiguous parcels not exceeding cost thresholds needed in the interest of national defense

10 U.S.C. 2672 authorizes the Secretary of the Army to acquire any interest in land he, or his designee, determines is needed in the interest of national defense and which does not exceed certain thresholds, exclusive of administrative costs and the amounts of any deficiency judgments. Acquisition may be by gift (donation), purchase, exchange of Government-owned land, or otherwise (see Section 501, Public Law 85-685 72 Stat 660). In the case of acquisition by gift (donation) or exchange of Government-owned land, the cost limitation mentioned above will be applied on the basis of the value of the real property being acquired, in lieu of its cost to the Government.

A-5. Transfer from the Departments of the Navy and the Air Force, the Marine Corps, and the Coast Guard

10 U.S.C. 2571 authorizes the interchange of supplies and real estate owned by the Government between the Army, Navy, Air Force, Marine Corps, and Coast Guard, without compensation, provided the request is made by the Secretary of the Army and is approved by the Secretary of the transferring department.

A-6. Reassignment from the Departments of the Navy and the Air Force

Section 202(c), Act of 30 June 1949 (Public Law 152, 81st Congress; 63 Stat 384) as amended by the Act of 12 July 1952 (Public Law 522, 82d Congress; 66 Stat 593; 30 U.S.C. 483) authorizes reassignment of property among the military departments of the Department of Defense without reimbursement.

A-7. Transfer from the General Services Administration or its designated disposal agent

Section 202(a), Act of 30 June 1949 (Public Law 152, 81st Congress; 63 Stat 384) as amended by Section 1(f), Act of 12 July 1952 (Public Law 522, 82d Congress; 66 Stat 593; 40 U.S.C. 483) provides for transfer of excess real property to other Government agencies. Federal Property Management Regulations, Sub-chapter H, Part 101-47 (41 CFR 101-47), implements these laws and prescribes policies relative to transfer of excess real property, particularly the circumstances under which reimbursement is required and the circumstances under which transfer may be made without reimbursement.

A-8. Transfer of housing and other facilities from the housing and home finance agency (Public Housing Commissioner)

Certain of the housing recreational (USO) facilities, and related facilities constructed or acquired under the Act of 14 October 1940, as amended (42 U.S.C. 1524), (also Public Law 176, 83rd Congress; 67 Stat 305), may be acquired by the Department of the Army by transfer from the Commissioner, Public Housing Administration of the Housing and Home Finance Agency.

A-9. Use of public domain lands under public land orders or permits from the Department of the Interior

Until passage of the Act of 28 February 1958 (Public Law 83-337; 72 Stat 28 43 U.S.C. 156), this type of acquisition was accomplished by withdrawal and reservation of public domain lands by Executive Order of the President or by Public Land Order of the Secretary of the Interior or his designee (Act of 25 June 1910; 36 Stat 847, 43 U.S.C. 141), (Act of 31 October 1951; 3 U.S.C. 301; 65 Stat 712) (Executive Order No. 10355, 26 May 1952) (Also see regulations issued by the Secretary of the Interior, 16 August 1957; 43 CFR 57-6771, 295.9 through 295.15). In addition, when ordered by the President, unappropriated public land could be reserved from entry and such land and other property of the United States could be designated and used for an airbase or a field for tests and experiments for the Army. (Sec 4772 of the Act of 10 August 1956; Public Law 1028, 84th Congress; 70A Stat 268; 10 U.S.C. 4772). Under the Act of 28 February 1958, above cited, it is necessary to obtain legislation to withdraw, reserve, or restrict over 5,000 acres.

A-10. Exchange (Interchange) of military lands for national forest lands (Secretary of Agriculture)

Public Law 804, 84th Congress (70 Stat 656; Act of 26 July 1956; 16 U.S.C. Secs 505a, 505b) authorizes the Secretary of a military department to acquire national forest lands by exchange (interchange) of lands under the control of a military department which lie within or adjacent to the exterior boundaries of a national forest, with the Secretary of Agriculture without reimbursement or transfer of funds.

A-11. Acquisition of lands for national cemeteries

The Secretary of the Army shall purchase from the owners such real estate as is in his judgment suitable and necessary for carrying into effect the provisions for National Cemeteries (24 U.S.C. 271). The Secretary of the Army is authorized to accept from any

State on behalf of and without cost to the United States, title to such land as he deems suitable for National Cemetery purposes (24 U.S.C. 271a).

A-12. Procurement of options prior to authorization to acquire real estate

10 U.S.C. Sec 2677 authorizes the procurement of options on real estate which is " suitable and likely to be needed " for a military project before or after its acquisition is authorized by law.

A-13. Donation for particular defense purposes

The Secretary may take real property, by donation, through the General Services Administration, for a particular defense purpose (Act of 27 July 1954 (68 Stat 566; 50 U.S.C. 1151 and 1152)).

A-14. Production of nitrates and munitions

By lease, purchase, condemnation, gift, or by taking lands of the United States, the President is authorized to acquire lands and rights-of-way for construction and operation of plants for the production of nitrates and other products for munitions of war (Sec 37b of the Act of 10 August 1956; Public Law 1028, 84th Congress; 70A Stat 635 50 U.S.C. 100b).

A-15. Exchange of land or property

Under 33 USC 558b, in connection with the execution of an authorized work of river and harbor improvement to exchange land or other property of the Government for private lands or property required for such project, the Secretary of the Army may exchange Government land or interests not including lands held or acquired by the Tennessee Valley Authority pursuant to the terms of the Tennessee Valley Authority Act (16 U.S.C. 831 et seq.). This section shall apply to any exchanges heretofore deemed advisable in connection with the construction of the Bonneville Dam in the Columbia River.

A-16. Production of lumber and timber products

Timber, sawmills, and other facilities suitable for the production of lumber and timber products needed for the production of aircraft, vessels, dry-docks, and housing for persons employed by the United States in connection with functions of the Army may be taken by condemnation, purchase, or donation (10 U.S.C. 2664).

A-17. Acquisition of plants, during war or imminence of war

In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of certain plants under certain circumstances. Each person or industry whose plant is seized is entitled to a fair and just rental (10 U.S.C. 4501).

A-18. Leases: land for special operations activities

Under 10 USC 2680, the Secretary of Defense may acquire a leasehold interest in real property if the Secretary determines that the acquisition of such interest is necessary in the interests of national security to facilitate special operations activities of forces of the special operations command established pursuant to section 167 of this title.

Sarkar, Rumu, CIV, WSO-BRAC

To: Hague, David, CIV, WSO-BRAC-Polk
Subject: Statutory Construction

In taking a fairly quick look at Sec. 2909(c) of the 1990 BRAC legislation (P.L. 101-510, as amended, 10 U.S.C. Sec. 2687 note), that provision specifies that the SecDef's authority to carry out closures and realignments shall not be affected with respect to:

- such closures and realignments taken under T.II of P.L. 100-526 (the 1988 BRAC law); and
- closures and realignments that are not covered by 10 U.S.C. Sec. 2687.

The second proviso is fairly simple insofar as 10 U.S.C. Section 2687(c) specifies that:

"This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security to a military emergency."

The first proviso is a little more problematic since Sec. 205 (falling within T.II of the 1988 BRAC law) contains a waiver provision that permits the SecDef to carry out that Title without regard to: (1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization act; and (2) the procedures set forth in 10 U.S.C. Sec. 2662 ((on real property transactions), and Sec. 2687 (the 1990 BRAC law). This seems to beg the question of whether the SecDef may invoke this waiver to exempt DOD from the procedural requirements of the 1990 BRAC law (which was passed as an amendment, incidentally, to the FY 2002 DOD Authorization Act (P.L. 107-107)).

Since the authority of the SecDef to carry out any closure or realignment under T.II of the 1988 BRAC law terminated on Oct. 1, 1995 (except with respect to carrying out environmental restoration and waste management of military installations closed or realigned under that authority), I am frankly mystified as to why this provision was specifically referred to in the amendments to the 1990 BRAC law creating the 2005 BRAC round. While it may make sense to release the SecDef from obligations to report to Congress on realty matters as required under 10 U.S.C. Sec. 2662, the reference to Section 2687 is confusing.

In sum, I am not clear on why Congress referred back to the 1988 BRAC law since the SecDef's authority to close or realign military installations under that authority terminated nearly ten years ago. However, I am happy to pursue this question further as you direct.

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been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.--This section is enacted by Congress--

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

(a) IN GENERAL.--Except as provided in subsection (c), during the period beginning on November 5, 1990, and ending on April 15, 2006, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

(b) RESTRICTION.--Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)

(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

(2) to carry out any closure or realignment of a military installation inside the United States.

(c) EXCEPTION.--Nothing in this part affects the authority of the Secretary to carry out

(1) closures and realignments under title II of Public Law 100-526; and

(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

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[CHAPTER 1803. FACILITIES FOR RESERVE COMPONENTS](#) > § 18238. **Army National Guard of United States; Air National Guard of United States: limitation on relocation of units**

Citation: **10 USCS § 18238**

10 USCS § 18238

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TITLE 10. ARMED FORCES
SUBTITLE E. RESERVE COMPONENTS
PART V. SERVICE, SUPPLY, AND PROCUREMENT
CHAPTER 1803. FACILITIES FOR RESERVE COMPONENTS

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10 USCS § 18238 (2005)

§ 18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units

A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter [[10 USCS §§ 18231 et seq.](#)] without the consent of the governor of the State or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia.

🚩 **History:**

(Aug. 10, 1956, ch 1041, § 1, 70A Stat. 123; Sept. 2, 1958, P.L. 85-861, § 1(43), 72 Stat. 1457; July 12, 1982, P.L. 97-214, § 3(d)(4), 96 Stat. 170; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle C, § 1664(b)(2), 108 Stat. 3010.)

🚩 **History; Ancillary Laws and Directives:**

- ↓ 1. Prior law and revision
- ↓ 2. Amendments

🚩 1. Prior law and revision:

1956 Act

Revised Section	Source (USCS)	Source (Statutes at Large)
2238 50:883 (b).	Sept. 11, 1950, ch. 945.

Sec. 4(b), 64 Stat. 830.

The words "from any community or area" are omitted as surplusage. The word "relocated" is substituted for the words "location . . . be changed". The words "Territory, or Puerto Rico, or the commanding general of the National Guard of the District of Columbia" are inserted to reflect 50:886(b), since the source statute applied to the District of Columbia and there is no "governor" of the District of Columbia. The words "as the case may be" are substituted for the words "within which such unit is situated". The words "with regard to such withdrawal or change of location" are omitted as surplusage.

1958 Act

Revised Section	Source (USCS)	Source (Statutes at Large)
2238	50:883(b)	Aug. 9, 1955, ch. 662(c), 69 Stat. 593.

The words "shall have been consulted" and "such withdrawal or change of location" are omitted as surplusage.

2. Amendments:

1958. Act Sept. 2, 1958 substituted the text of this section for text which read: "No unit of the Army National Guard of the United States or the Air National Guard of the United States may be relocated or withdrawn under this chapter until the governor of the State or Territory, or Puerto Rico, or the commanding general of the National Guard of the District of Columbia, as the case may be, has been consulted."

1982. Act July 12, 1982 (effective 10/1/82, as provided by § 12(a) of such Act, which appears as 10 USCS § 2801 note), substituted "or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia." for "or Territory, or Puerto Rico, or the commanding general of the National Guard of the District of Columbia, as the case may be."

1994. Act Oct. 5, 1994 (effective 12/1/94 as provided by § 1691 of such Act, which appears as 10 USCS § 10001 note) transferred Chapter 133, including this section, to Part V of Subtitle E of Title 10, USCS; redesignated such Chapter as Chapter 1803; and redesignated this section, formerly 10 USCS § 2238, as 10 USCS § 18238.

Notes:

Related Statutes & Rules:

This section is referred to in 10 USCS § 18233.

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States; Air National Guard of United States: limitation on relocation of units

Citation: **10 USCS § 18238**

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[CHAPTER 1. ORGANIZATION > § 104. Units: location; organization; command](#)Citation: **32 USCS § 104***32 USCS § 104*

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TITLE 32. NATIONAL GUARD
CHAPTER 1. ORGANIZATION

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32 USCS § 104 (2005)

§ 104. Units: location; organization; command

(a) Each State or Territory and Puerto Rico may fix the location of the units and headquarters of its National Guard.

(b) Except as otherwise specifically provided in this title [[32 USCS §§ 101](#) et seq.], the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.

(c) To secure a force the units of which when combined will form complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State and Territory, Puerto Rico, and the District of Columbia. However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.

(d) To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units. However, the commanding officer of a unit organized wholly within a State or Territory, Puerto Rico, or the District of Columbia may not be displaced under this subsection.

(e) To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform the duties of the corresponding position for each fully organized wing of the Air National Guard.

(f) Unless the President consents--

- (1) an organization of the National Guard whose members have received compensation

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DCN: 12058

from the United States as members of the National Guard may not be disbanded; and
 (2) the actual strength of such an organization in commissioned officers or enlisted members may not be reduced below the minimum strength prescribed by the President.

History:

(Aug. 10, 1956, ch 1041, § 2, 70A Stat. 598.)
 (As amended Sept. 29, 1988, P.L. 100-456, Div A, Title XII, Part D, § 1234(b)(1), (2), 102 Stat. 2059.)

History; Ancillary Laws and Directives:

- 1. Prior law and revision
- 2. Amendments
- 3. Other provisions

1. Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
104 (a)	32:6.	June 3, 1916, ch 134,
104 (b)	32:5 (1st sentence).	Secs. 64, 65 (proviso),
104 (c)	32:5 (less 1st sentence).	68, 39 Stat. 198-200.
104 (d)	32:8.	June 3, 1916, ch 134,
104 (e)	32:10 (proviso).	Sec. 60; June 4, 1920,
104 (f)	32:16.	ch 227 subch I, Sec. 36; re- stated June 15, 1933, ch 87, Sec. 6, 48 Stat. 156.

In subsec. (a), the words "within their respective borders" are omitted as surplusage.
 In subsec. (b), the word "Army" is substituted for the words "Regular Army", since the Army is the category for which the organization is prescribed, and the Regular Army is a personnel category for which no organization is prescribed. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

In subsec. (c), the words "by branch of the Army or organization of the Air Force" are substituted for the words "as to branch or arm of service". The words "branch, organization, or allotment of a unit" are substituted for the words "allotment, branch, or arm of units or organizations".

In subsecs. (d) and (e) the word "commissioned" is inserted, since 32 USC § 8 and 10 historically applied only to commissioned officers (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)).

In subsec. (d), the word "brigades" is omitted as surplusage.

In subsec. (e), the word "tactical" is omitted as surplusage.

In subsec. (f), the words "have received compensation from the United States as members of the National Guard" are substituted for the words "shall be entitled to and shall have

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Citation: **10 USCS § 18233**

10 USCS § 18233

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 [Related Statutes & Rules](#)

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10 USCS § 18233 (2005)

§ 18233. Acquisition

(a) Subject to sections 18233a, 18234, 18235, 18236, and 18238 of this title and to subsection (c), the Secretary of Defense may--

(1) acquire by purchase, lease, or transfer, and construct, expand, rehabilitate, or convert and equip, such facilities as he determines to be necessary to carry out the purposes of this chapter [[10 USCS §§ 18231 et seq.](#)];

(2) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it or by the United States for use jointly by units of two or more reserve components of the armed forces or to acquire or construct facilities for such use;

(3) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it (or to acquire, construct, expand, rehabilitate, or convert additional facilities) made necessary by the conversion, redesignation, or reorganization of units of the Army National Guard of the United States or the Air National Guard of the United States authorized by the Secretary of the military department concerned;

(4) contribute to any State such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by it of additional facilities as he determines to be required by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States;

(5) contribute to any State amounts for the acquisition, construction, expansion, rehabilitation, and conversion by such State of such additional facilities as the Secretary determines to be required because of the failure of existing facilities to meet the purposes of this chapter [[10 USCS §§ 18231 et seq.](#)]; and

(6) contribute to any State such amounts for the construction, alteration, or rehabilitation of critical portions of facilities as the Secretary determines to be required to meet a change in Department of Defense construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility.

(b) Title to property acquired by the United States under subsection (a)(1) vests in the United States. Such property may be transferred to any State incident to the expansion,

rehabilitation, or conversion of such property under subsection (a)(2) so long as the transfer of such property does not result in the creation of an enclave owned by a State within a Federal installation.

(c) The Secretary of Defense may delegate any of his authority or functions under this chapter [10 USCS §§ 18231 et seq.] to any department, agency, or officer of the Department of Defense.

(d) The expenses of leasing property under subsection (a)(1) may be paid from appropriations available for the payment of rent.

(e) The Secretary of Defense may procure, or contribute to any State such amounts as the Secretary determines to be necessary to procure, architectural and engineering services and construction design in connection with facilities to be established or developed under this chapter [10 USCS §§ 18231 et seq.] which are not otherwise authorized by law.

(f)

(1) Authority provided by law to construct, expand, rehabilitate, convert, or equip any facility under this section includes authority to expend funds for surveys, administration, overhead, planning, design, and supervision incident to any such activity.

(2) Authority to acquire real property under this section includes authority to make surveys and to acquire interests in land (including temporary interests) by purchase[,] or gift.

History:

(Aug. 10, 1956, ch 1041, § 1, 70A Stat. 121; Aug. 20, 1958, P.L. 85-685, Title VI, § 601 (1), (2), 72 Stat. 664; Sept. 2, 1958, P.L. 85-861, § 1(37)-(39), 72 Stat. 1456; Nov. 26, 1979, P.L. 96-125, Title VII, § 703, 92 Stat. 947; Dec. 23, 1981, P.L. 97-99, Title VIII, §§ 803, 804, 95 Stat. 1380, 1381; July 12, 1982, P.L. 97-214, § 3(a), (d)(2) in part, (e)(1), 10 (a)(2), 96 Stat. 169, 170, 175; Aug. 28, 1984, P.L. 98-407, Title VII, § 703(a), 98 Stat. 1517; Oct. 19, 1984, P.L. 98-525, Title XIV, § 1405(34), 98 Stat. 2624; Dec. 3, 1985, P.L. 99-167, Title VII, § 702(a), 99 Stat. 985; Dec. 5, 1991, P.L. 102-190, Div B, Title XXVIII, Part A, § 2801, 105 Stat. 1537; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle C, § 1664(b)(2), (4), 108 Stat. 3010.)

(As amended Oct. 5, 1999, P.L. 106-65, Div B, Title XXVIII, Subtitle A, § 2805, 113 Stat. 850; Oct. 28, 2004, P.L. 108-375, Div B, Title XXVIII, Subtitle A, § 2809(b), 118 Stat. 2127.)

History; Ancillary Laws and Directives:

- 1. Prior law and revision
- 2. Explanatory notes
- 3. Amendments
- 4. Other provisions

1. Prior law and revision:

1956 Act

 Revised Section Source (USCS) Source (Statutes at Large)

2233 (a) 50:882. Sept. 11, 1950, ch. 945,



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EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3) -- (Early Transfer Authority Guidance)

I. PURPOSE

This guidance addresses the transfer by deed, under Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), of real property listed on the National Priorities List (NPL) held by a federal agency (landholding federal agency⁽¹⁾) where the release or disposal of hazardous substances has occurred, but where all necessary remedial action has not yet been taken. This document provides guidance to the EPA Regions that have received a request from a landholding federal agency for the deferral of the covenant mandated by CERCLA Section 120(h)(3)(A)(ii)(I) that all necessary remedial action has been taken prior to the date of transfer. This guidance establishes EPA's process to determine, with the concurrence of the Governor, that the property is suitable for transfer prior to all necessary remedial action being taken.

II. EPA's REQUIREMENTS FOR APPROVING A DEFERRAL REQUEST

When a federal agency transfers to another person (i.e., an entity other than another federal agency) real property on which hazardous substances have been stored for one year or more, known to have been released, or disposed of, the deed must contain a covenant warranting that "all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of transfer" (the CERCLA 120(h)(3)(A)(ii)(I) Covenant) and that "any additional remedial action found to be necessary after the date of the transfer shall be conducted by the United States."⁽²⁾EPA, with the concurrence of the Governor of the State in which the facility is located, may defer the CERCLA Covenant for parcels of real property at facilities listed on the NPL.⁽³⁾

The Agency's general current view is that it will seek the concurrence of federally recognized Indian tribes for purposes of determining whether the covenant requirement under CERCLA 120(h) should be deferred pursuant to CERCLA 120(h)(3)(C) for property located in Indian country within tribal jurisdiction. However, the Agency will only make a final determination as to the appropriate tribal role under CERCLA 120(h)(3)(C) in the context of an actual Covenant Deferral Request made for property located in Indian

country within tribal jurisdiction. The Agency's determination should be made in light of the specific facts and circumstances surrounding a particular Covenant Deferral Request. If the EPA Regional office receives a Covenant Deferral Request concerning a transfer of property that is located in Indian country with tribal jurisdiction, the EPA Regional office should contact EPA Headquarters, the American Indian Environmental Office and the Federal Facilities Restoration and Reuse Office, for specific guidance.

In order for EPA to defer the covenant requirement, CERCLA Section 120(h)(3)(C)(i)(I)-(IV) requires that EPA determine that the property is suitable for transfer based on a finding that:

1. the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;
2. the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the Response Action Assurances described in section IV of this guidance;
3. the federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and
4. the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

These findings are intended to assure that there is a sound basis for the proposed transfer based on the finding that the particular reuse of the property identified by the transferee does not pose an unacceptable risk⁽⁴⁾ to human health or the environment. As stated in Section 120(h)(3)(C)(iv), all statutory obligations required of a federal agency remain the same, regardless of whether the property is transferred subject to a covenant deferral.

III. APPLICABILITY AND SCOPE

This guidance applies to all early transfers by deed under CERCLA Section 120(h) of contaminated real property owned by a federal agency and listed on the National Priorities List (NPL), regardless of the statutory authority underlying a cleanup, including transfers of property at DoD installations selected for closure or realignment.

This guidance does not apply to federal-to-federal transfers of property or to transfers of uncontaminated property. A federal agency that is sponsoring a public benefit conveyance may use this guidance as a model for obtaining useful information. Under a public benefit conveyance, a sponsoring federal agency acts as a conduit through which title will ultimately pass from the United States to a public benefit recipient. For further information regarding the relationship between a sponsoring federal agency and the Department of Defense (DoD) for Base Realignment and Closure (BRAC) property (a landholding federal agency), please see the Memorandum of Agreement

signed by DoD and the federal agencies that sponsor public benefit transfers (dated April 21, 1997).

IV. GUIDANCE

EPA should generally not consider deferral of the covenant request for real property unless the landholding federal agency submits a Covenant Deferral Request (CDR) containing the information recommended by this guidance.

While the statute does not explicitly require a signed Interagency Agreement (IAG) to be in place as a prerequisite for deferring the covenant requirement, EPA believes that the existence of an IAG will significantly aid the Agency in making the covenant deferral decision.

A. Covenant Deferral Request

As discussed in Section II, EPA may defer the CERCLA Section 120(h)(3) covenant requirement if EPA determines that a property is suitable for transfer based on certain findings. To commence the process, the landholding federal agency should submit information of a sufficient quality and quantity to EPA to support its request for deferral and provide a basis for EPA to make its determination. This information should be submitted to EPA in the form of a Covenant Deferral Request (CDR). EPA should consider a CDR complete when it includes all of the following components.

1. Property Description

A legal description of the real property or sufficient information which clearly identifies the property for which the CERCLA Covenant is requested to be deferred.

2. Nature/Extent of Contamination

A description of the nature and areal extent of contamination (with supporting documentation) which affects the property to be transferred and which will not be remediated prior to transfer. There is a presumption that the Covenant Deferral Request should include the results from a completed Remedial Investigation (RI) for the parcel that will be transferred. However, the landholding federal agency should have an opportunity to demonstrate why such data and findings are not necessary before the land is transferred.

When determining what information is necessary, the EPA Region should take into consideration, at a minimum, the degree of uncertainty regarding the nature and extent of contamination; the future use of the property prior to completion of the response action; who is to perform future work; and any existing information or data on the parcel under consideration. Generally, the greater the uncertainty about any of these factors, the more information the EPA Region may require to make the determination. As noted below, the landholding Federal agency remains responsible for all necessary response actions including the remedial investigation and the cleanup remains subject to the requirements of Section 120.

3. Analysis of Intended Land Use During the Deferral Period

Contents of the Covenant Deferral Request:

- Property Description
- Nature/Extent of Contamination
- Analysis of Intended Future Land Use During the Deferral Period
- Risk Assessment
- Response/Corrective Action Requirements
- Operations and Maintenance Requirements
- Contents of Deed
- Responsiveness Summary
- Transferee Response Action Assurances and Agreements

A description of the intended land use of the property during the deferral period and an analysis of whether the intended use is reasonably expected to result in exposure to CERCLA hazardous substances at sites where response actions have not been completed. This analysis should be based on the environmental condition of the property and should consider the contaminant(s), exposure scenarios, and potential and actual migration pathways that may occur during the future use. Where a potential or actual unacceptable exposure to hazardous substances is identified, the analysis should identify what response actions should be taken to prevent such exposure. Treatment, engineering controls and use restrictions (see Section 6.d - Response Action Assurances), may be considered as a means of limiting unacceptable exposures to hazardous substances while allowing for property reuse. Any other response actions necessary to protect human health and the environment should be included in the deed (or other agreement governing the transfer) as described in Subsection 6 of this policy. The land use during the deferral period cannot be inconsistent with any necessary response actions.

4. Results From A Risk Assessment

Results from a CERCLA risk assessment, taking into consideration reasonably anticipated future land use assumptions. There is a presumption that the Covenant Deferral Request include the results from a completed risk assessment, as defined in the National Contingency Plan (NCP) and EPA guidance. However, the landholding federal agency should have an opportunity to demonstrate why a risk assessment does not have to be completed before the land is transferred.

When determining whether a completed risk assessment is needed before the early transfer, the EPA Region should take into consideration, at a minimum, the degree of uncertainty regarding the potential risks posed by the contamination; existing analyses; certainty about future use; and who is conducting the response. The greater the uncertainty about the risk from the contamination, the more information EPA may require. As noted below, the landholding Federal agency

remains responsible for all necessary response actions, including the risk assessment.

In the absence of the completed risk assessment, at a minimum, EPA Regions should examine potential exposure(s) during the deferral period, taking into account any proposed restrictions to ensure the protectiveness of human health and the environment.

5. Response/Corrective Action and Operation and Maintenance Requirements

A description of any ongoing or planned response or corrective action, including a projected milestone date for the selection and completion of the action, and/or projected date for the demonstration that a remedial action is "operating properly and successfully." Also, it will be necessary to provide adequate information regarding ongoing or planned response actions and operation and maintenance of the response or corrective action.

6. Contents of Deed/Transfer Agreement

a. Notice

A copy of the notice to be included in the deed as required by CERCLA Section 120(h)(1)and(3) and in accordance with regulations set forth at 40 CFR Part 373.

b. Covenant

A copy of the covenant warranting that any additional remedial action found to be necessary after the date of transfer shall be conducted by the United States as required by CERCLA Section 120(h)(3)(A)(ii)(II).

c. Access

A copy of the clause which reserves to the United States access to the property in any case in which an investigation, response, or corrective action is found to be necessary after the date of transfer as required by CERCLA Section 120(h)(3)(A)(iii).

d. Response Action Assurances

A copy of the Response Action Assurances that must be included in the deed or other agreement proposed to govern the transfer as required under CERCLA Section 120(h)(3)(C)(ii). As required by statute, these assurances shall:

i. provide for any necessary restrictions on the

use of the property to ensure the protection of human health and the environment;

ii. provide that there will be restrictions on the use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

iii. provide that all necessary response action will be taken and identify the schedule(s) for investigation(s) and completion of all necessary response action(s) as approved by the appropriate regulatory agency; and

iv. provide that the landholding federal agency has or will obtain sufficient funding through either: (a) submission of a budget request (or budget requests in the event multi-year funding is needed) to the Director of the Office of Management and Budget that adequately addresses schedule for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations; or (b) sufficient current appropriations to accomplish investigation(s) and completion(s) of all necessary response action (s). In addition to (a) or (b), the landholding federal agency may also have an agreement with the transferee to fund and/or accomplish all or part of the remediation.

The Response Action Assurances should include a description of requirements to assure the protectiveness of the response action and shall specify the mechanisms for assuring that such measures remain effective. These measures should reflect discussions among the reuse entity, the community, the landholding federal agency and any appropriate federal, State, or local government.

7. Responsiveness Summary

The final CDR should include a response to comments document which contains the landholding federal agency's responses to the written comments received during the public comment period under Section 120 (h)(3)(C)(I)(III) and to the written comments received from the regulatory agencies on the draft CDR.

8. Transferee Response Action Assurances and Agreements

A transferee may agree to conduct response actions on the property. However, the landholding Federal agency remains responsible for ensuring that all necessary response actions including , as appropriate, investigations and requirements under an IAG are done.

When property is transferred prior to completion of the cleanup, the landholding federal agency should include in

each deed provisions notifying the transferee of the requirement for, and status of, an Interagency Agreement or other enforceable environmental cleanup agreement or order, as appropriate.

The landholding federal agency should also notify the transferee that EPA and the State and their agents, employees and contractors, will have rights of access as necessary to implement response actions and oversight responsibilities at the facility.

Where the transferee has agreed to fund and conduct the cleanup or portions of the cleanup as a condition of the transfer, the landholding federal agency should provide to EPA documentation demonstrating that the transferee has or will become legally obligated to conduct the required response actions in accordance with the existing IAG. Should the transferee become unable or unwilling to complete the cleanup or order under its agreement with the landholding federal agency, EPA expects the landholding federal agency will complete the cleanup. Nothing in this guidance shall be interpreted to affect EPA's or the landholding federal agency's authority or responsibility under CERCLA or any other federal statute to enforce the terms and conditions of an existing IAG or to limit EPA's authority to impose requirements necessary to protect public health and the environment.

If the transferee is expected to perform any response action (e.g., excavation of contaminated soil in an area where facilities are to be constructed), then EPA should receive assurance from the landholding federal agency that the transferee has:

- a. the technical capacity (in-house or through appropriate contract management) to perform anticipated investigations and response or corrective actions; and
- b. the financial capacity to execute environmental cleanup activity requirements that are known or can reasonably be anticipated, based on current information available.

Financial capacity may be an especially sensitive area for a transferee and/or the landholding federal agency. While the assurance does not need to contain the actual documentation of the financial capacity, the EPA Region may request such information from the landholding federal agency if there are questions in this regard.⁽⁵⁾ Any proprietary or confidential business information should be handled as required under Federal regulations.

If the landholding federal agency submits information supporting the technical and financial assurances, but the EPA Region disagrees with the adequacy of such assurances, and they cannot resolve their differences, there will be the opportunity to elevate the disagreement to the federal agency headquarters and EPA Headquarters. The EPA Region should

contact the Federal Facilities Restoration and Reuse Office in OSWER and the federal agency should elevate the issue to its headquarters component when resolution cannot be reached at the Senior Manager level. EPA Headquarters and the headquarters of the landholding federal agency will resolve the disagreement in an expeditious fashion so as not to delay transfer.

The transferee should agree to conduct all necessary environmental response actions in accordance with CERCLA and the National Contingency Plan (NCP). In the case where the transferee does not perform cleanup in accordance with CERCLA and the NCP or the terms of a cleanup agreement, then the United States may enter the property and perform any necessary response action.

B. Process for Requesting Covenant Deferral

Before preparing a CDR, the landholding federal agency should notify the Administrator of EPA or designee and the Governor of the State of the intent to request a CERCLA Covenant Deferral and invite participation in the development and review of the draft CDR. This notice should allow sufficient time for EPA, and State agencies, to participate in the development and review and comment on a draft CDR.

As required by Section 120(h)(3)(C)(I)(III), the landholding federal agency must provide notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer. The notice should include:

1. The identity of the property proposed for transfer, the proposed transferee and the intended use of the property;
2. A statement that the property is listed on the National Priorities List and that the proposed transfer is pursuant to CERCLA 120(h)(3)(C) which allows the transfer of federal property before remedial action is completed when certain conditions are satisfied;
3. An assessment of whether the transfer is consistent with protection of human health and the environment will be made only after a comprehensive evaluation of the environmental condition of the property in consultation with the U.S. EPA and the appropriate State agencies;
4. A summary of the decision-making process, e.g., that the property will not be transferred until U.S. EPA determines, with the Governor's concurrence, that the transfer of the property for use as intended is consistent with protection of human health and the environment and that the federal agency has provided assurance that response actions will be taken;
5. The address and telephone number of the agency office which may be contacted for obtaining a copy of the draft Covenant Deferral Request, site-specific information and the address of the location of the administrative record for the response program; and

6. A statement that interested members of the public may comment on the suitability of the property (the draft Covenant Deferral Request) for transfer and must submit such comments to the agency before a date not less than 30 days from the date of the publication of the notice.

It is also recommended that the draft CDR be made available to any existing Restoration Advisory Boards (RAB), Site Specific Advisory Boards (SSAB), affected local governments, and/or other interested community-based groups. Specific efforts should be made to involve tribes surrounding the property that is to be transferred. As stated in the notice requirement, the public shall be provided with at least a 30 day period in which to submit comments on the suitability of the property for transfer. It may be appropriate under certain circumstances (i.e., large and/or complicated land transfers) to extend the public comment period beyond 30 days.

After the public comment period has expired, the landholding federal agency may then submit the final CDR to the appropriate EPA Regional office and State representative. Property cannot be transferred by deed until the CERCLA Covenant is explicitly deferred by EPA and the State. The request to defer the CERCLA Covenant should be made simultaneously to the EPA and the State. EPA and the State should work closely to assure careful evaluation of the request. EPA Regional offices are encouraged to take steps to streamline the coordination process to avoid unnecessary delay.

C. Completion of Response Actions After Transfer

When all response actions necessary to protect human health and the environment have been taken, e.g., when there has been a demonstration to EPA that the approved remedy is "operating properly and successfully⁽⁶⁾" pursuant to CERCLA Section 120(h)(3)(B) (regardless of whether the landholding federal agency or the transferee has taken the action), the landholding federal agency shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken. This warranty will satisfy the requirement of CERCLA Section 120(h)(3)(A)(ii)(I).

V. NOTICE

This guidance and internal procedures adopted for implementation are intended solely as policy for employees of the US EPA. Such guidance and procedures do not constitute rule making by the Agency and do not create legal obligations. The extent to which EPA applies this guidance will depend on the facts of each case.

1. A landholding federal agency is the federal agency that holds custody and accountability for the property on behalf of the United States. 41 CFR 101-47.103.7 **Return to Document**

2. CERCLA Section 120(h)(3)(A)(ii) sets forth the two components of the covenant that shall be contained in each deed. For purposes of this policy and the request for deferral, the term "CERCLA Covenant" refers only to the first component contained in Section 120(h)(3)(A)(ii)(I). **Return to Document**

3. For non-NPL sites, the Governor of the State in which the facility is located may defer the CERCLA Covenant. **[Return to Document](#)**

4. See, 40 CFR 300.430(d)(4) and U.S. EPA 1989a. *Risk Assessment Guidance for Superfund (RAGS): Volume 1: Human Health Evaluation Manual (HHEM), Part A, Interim Final and Part B, Development of Risk-Based Preliminary Remediation Goals*. Office of Emergency and Remedial Response, Washington, D.C. EPA /540/1-89/002, NTIS PB90-155581/CCE and Publication 9285.7-01B NTIS PB92-963333. **[Return to Document](#)**

5. Financial capacity may be demonstrated through, but not limited to: reasonably anticipated cash flows, existence of appropriate insurance, posting of a construction/ indemnity bond, authority of the transferees to issue revenue bonds for such purpose, or assets, excluding the real property to be transferred. Obtaining a security interest in the transferee's assets may be used as a means of assuring project completion. **[Return to Document](#)**

6. See, "Guidance for Evaluation of Federal Agency Demonstrations That Remedial Actions Are Operating Properly and Successfully Under CERCLA Section 120(h)(3)," August 1996, NTIS PB97-143770; <http://www.epa.gov/swerffrr>. **[Return to Document](#)**

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Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§9620) - Section 120(h)

(h) Property transferred by Federal agencies

(1) Notice

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) Form of notice; regulations

Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after October 17, 1986, but not later than 18 months after October 17, 1986, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds

- A. In General - After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain-
- I. to the extent such information is available on the basis of a complete search of agency files
 - I. a notice of the type and quantity of such hazardous substances,
 - II. notice of the time at which storage, release, or disposal took place, and
 - III. a description of the remedial action taken, if any;
 - II. a covenant warranting that-
 - I. all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and
 - II. any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States
 - III. a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.
- B. Covenant requirements for purposes of subparagraph (A)(ii)(I) and (C)(iii) – all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to

purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (A)(ii) that has not been taken on the date of the lease.

C. Deferral -

- I. In General- The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determine that the property is suitable for transfer, based on a finding that-
 - I. the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;
 - II. the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause ii
 - III. the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer, and
 - IV. the deferral and the transfer of the property will not substantially delay any necessary response action at the property,
- II. Response Action Assurance-With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that-
 - I. provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;
 - II. provide that there will be restrictions on the use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;
 - III. provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and
 - IV. provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.
- III. Warranty-When all response action necessary to protect human health and the environment with respect to any substance, remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of subparagraph (A)(ii)(I).

- IV. Federal Responsibility- a deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under sections 106, 107, and 120 existing prior to transfer) with respect to a property transferred under this subparagraph.

(4) Identification of uncontaminated property

- A. In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released, or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:
 - I. a detailed search of Federal Government records pertaining to the property.
 - II. Recorded chain of title documents regarding the real property.
 - III. Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.
 - IV. a visual inspection of the real property and any building, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.
 - V. a physical inspection of property adjacent to the real property, to the extent permitted by the owners or operators of such property.
 - VI. Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.
 - VII. Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

- B. The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.
- C.
 - I. Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.
 - II. In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by the date of the enactment of the

Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after such date of enactment.

- III. In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by which a joint resolution disproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.
 - IV. In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (a) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.
- D. In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain-
- I. a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and
 - II. a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.
- E.
- I. This paragraph applies to-
 - I. real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and
 - II. real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.
 - II. For purposes of this paragraph, the term "base closure law" includes the following:
 - I. Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).
 - II. The Defense Base Closure and Realignment Act of 1990 (part a of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).
 - III. Section 2687 of title 10, United States code.
 - IV. Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of enactment of the Community Environmental Response Facilitation Act.
- F. Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) Notification to states regarding certain leases

DCN: 12058

In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

 **HOME**

Comments

Base Realignment and Closure (BRAC) Program

Frequently Asked Questions

U.S. Environmental Protection Agency
Federal Facilities Restoration and Reuse Office

Question: Which of the first four rounds—1988, 1991, 1993 and 1995—of Base Realignment and Closure (BRAC) installations are listed on the Superfund National Priority List (NPL)?

Answer: There are currently 34 BRAC installations listed on the NPL, which include the following:

EPA Region	State	BRAC Facility on the NPL	DoD Service
1	MA	FORT DEVENS	Army
1	MA	MATERIALS TECHNOLOGY LABORATORY	Army
1	MA	SOUTH WEYMOUTH NAVAL AIR STATION	Navy
1	ME	LORING AIR FORCE BASE	Air Force
1	NH	PEASE AIR FORCE BASE	Air Force
1	RI	DAVISVILLE NAVAL CONSTRUCTION BATTALION CENTER	Navy
2	NJ	FORT DIX	Army
2	NY	GRIFFISS AIR FORCE BASE	Air Force
2	NY	PLATTSBURGH AIR FORCE BASE	Air Force
2	NY	SENECA ARMY DEPOT	Army
3	MD	FORT GEORGE G. MEADE	Army
3	PA	LETTERKENNY ARMY DEPOT (PDO AREA) *	Army
3	PA	LETTERKENNY ARMY DEPOT (SE AREA) *	Army
3	PA	NAVAL AIR DEVELOPMENT CENTER - WARMINSTER	Navy
4	FL	HOMESTEAD AIR FORCE BASE	Air Force
4	FL	USN AIR STATION CECIL FIELD	Navy
4	TN	MEMPHIS DEFENSE DEPOT	Defense Logistic Agency (DLA)
5	IL	SAVANNA ARMY DEPOT ACTIVITY	Army
8	UT	OGDEN DEFENSE DEPOT	DLA
8	UT	TOOELE ARMY DEPOT (NORTH AREA)	Army
9	AZ	WILLIAMS AIR FORCE BASE	Air Force
9	CA	ALAMEDA NAVAL AIR STATION	Navy
9	CA	CASTLE AIR FORCE BASE	Air Force
9	CA	EL TORO MARINE CORPS AIR STATION	Navy
9	CA	FORT ORD	Army
9	CA	GEORGE AIR FORCE BASE	Air Force
9	CA	MARCH AIR FORCE BASE	Air Force
9	CA	MATHER AIR FORCE BASE	Air Force
9	CA	MCCLELLAN AIR FORCE BASE	Air Force
9	CA	MOFFETT NAVAL AIR STATION	Navy
9	CA	NORTON AIR FORCE BASE	Air Force
9	CA	SACRAMENTO ARMY DEPOT	Army
9	CA	TREASURE ISLAND NAVAL STATION-HUNTERS POINT ANNEX	Navy
10	AK	ADAK NAVAL AIR STATION	Navy
10	OR	UMATILLA ARMY DEPOT	Army

*Although there are 35 NPL facilities listed above, only 34 BRAC facilities are on the NPL. Letterkenny Army Depot, PA is one BRAC installation; however it has two areas that are listed separately on the NPL.

Question: Why is it taking so long to cleanup the first four rounds of BRAC installations?

Answer: Extensive site cleanup work is being conducted. Many areas of contamination at these installations are the result of decades of Department of Defense (DoD) use and operation. Principle types of contaminants includes: heavy metals, solvents, volatile organic compounds, and military munitions.

Many of these installations have contaminated ground water that can be extremely difficult to clean-up, in order to meet safe drinking water consumption levels, for several reasons:

- Aquifers are complex structures. Aquifers can contain cracked and fractured rocks and other geological variations. These variations can act as nooks and crannies that hold contaminants or create additional pathways for contaminants to follow. This makes removing contaminants difficult.
- Not all contaminants behave in the same way. Different contaminants act different in ground water. This makes them hard to locate and remove, complicating cleanup. Some do not mix with or dissolved readily in water. Some are heavier than water and sink to the bottom of an aquifer. Other contaminants are lighter than water and float on top, such as petroleum products like jet fuel and gasoline.
- Locating the contamination can be difficult. The ability of technology to find contaminants in ground water is limited. Samples from ground water wells do not always provide enough information about the extent of contamination.
- Technology has limitations. Treatment technologies are limited in their ability to cleanup an aquifer, even if the location of the contaminants is known. Frequently, ground water is cleaned by pumping it to the surface for treatment. After contaminants have been removed, the water is discharged back into the ground or a stream or river. Contaminants that cannot be pumped to the surface with water must be treated underground, making the cleanup more difficult, expensive, and time-consuming.

For additional information and key documents on ground water, visit EPA's web site: <http://www.epa.gov/superfund/resources/gwdocs/>

Question: What is the relationship between BRAC installations and facilities on the NPL?

Answer: A BRAC facility may or may not be on the Superfund NPL. From the previous four rounds, there are currently 34 BRAC installations on the NPL. Facilities on the NPL cover a wide range of industries and uses, and include some currently active and closed military installations. An installation's cleanup status on the NPL will not change if it will be closed under the base realignment and closure program.

Question: To ensure that cleanup remedies remain protective, what happens after a BRAC property has been cleaned up and transferred by a DoD Service?

Answer: In accordance with EPA's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requirements, if waste is left in place and the use of the property is restricted, then a review must be completed to determine if the remedy is protective of human health and the environment every five years.

Question: After cleanup, what types of land use restrictions may exist to prevent reuse and redevelopment on a BRAC installation?

Answer: While the cleanup of an installation incorporates the reasonable anticipated future land use, and the cleanup remedies selected to perform the cleanup are made with future land uses in mind, there may be restrictions on specific activities or what can be built at a site because contamination is left in place. Such land use restrictions are called institutional controls and are unique to each site.

Question: Should those BRAC installations that have one or both environmental indicators (human exposures or ground water migration pathways) not under control be considered to pose a hazard to the surrounding area?

Answer: No. For each BRAC installation on the NPL, all immediate threats have been addressed. It is important to note that the human exposure environmental indicator addresses both actual human exposure pathways, as well as potential exposures. The same is true for the ground water measure. Facilities are designated "not under control" until every potential exposure pathway has been addressed. For installations found in this category, one cannot assume that there are actual exposures occurring. Rather, a potential exposure pathway may need to be addressed or is in the process of being addressed (e.g., a ground water treatment or containment system is being installed, but it is not yet operational).

Question: Are BRAC sites eligible for EPA Brownfields grants?

Answer: No, BRAC sites cannot receive Brownfield grant money from EPA.

Chapter 4 Implementation and Reuse

When implementing decisions during the past four BRAC rounds, the Department worked diligently to assist its military and civilian personnel in transition, to transfer property for reuse, and to assist communities in converting surplus military installations to civilian reuse. The Department attempted to minimize involuntary separations of Defense civilians at closing or realigning installations through a variety of placement, retirement, and federal retraining programs.

As a result of prior BRAC efforts, the Department has transferred over 450,000 acres of land and related facilities by deed or long-term lease to other entities for reuse. These transfers have permitted the creation of more than 110,000 new jobs, and redevelopment is continuing at those former installations. New job creation has continued to increase at an average annual rate of nearly ten percent over the past four years. In implementing BRAC 2005 decisions, the Department plans to assist community redevelopment, capitalizing on its previous experience and adapting to changing economic and market conditions. While some installations will close and others will experience job losses through realignment, other installations will expand to accommodate missions and relocated personnel. Relocations of missions and associated personnel were a significant aspect of BRAC 2005.

Guiding Principles

Out of its experience assisting communities during the implementation of previous BRAC rounds, the Department believes that the following principles will be particularly useful in the transition in communities supporting the Department's mission:

- **Act expeditiously whether closing or realigning.** Relocating activities from installations designated for closure will, when feasible, be accelerated to facilitate the transfer of real property for community reuse. In the case of realignments, the Department will pursue aggressive planning and scheduling of related facility improvements at the receiving location.
- **Fully utilize all appropriate means to transfer property.** Federal law provides the Department with an array of legal authorities, including public benefit transfers, economic development conveyances at cost and no cost, negotiated sale to state or local government, conservation conveyances, and public sale, by which to transfer on closed or realigned installations. Recognizing that the variety of types of facilities available for civilian reuse and the unique circumstances of the surrounding communities does not lend itself to a "one-size-fits-all-solution," the Department will use this array of authorities in a way that considers individual circumstances.

- **Rely on and leverage market forces.** After four rounds of BRAC, both the public and private sectors are aware of the range of opportunities available for property reuse. A broad spectrum of practitioners has gained experience in all phases of base closure and redevelopment. This expertise should allow market forces to work effectively. Community redevelopment plans and military conveyance plans should be integrated to the extent practical and should take account of any anticipated demand for surplus military land and facilities. If installation growth is substantial, the Department will work with the surrounding community so that the public and private sectors can provide the services and facilities needed to accommodate new personnel and their families.
- **Collaborate effectively.** Experience suggests that collaboration is the linchpin to successful installation redevelopment. Only by collaborating with the local community can the Department close and transfer property in a timely manner and provide a foundation for solid economic redevelopment. While BRAC sometimes challenges the existing supportive partnership between the installation and the community, both parties can benefit from the change if they continue to recognize themselves as partners whose individual interests in carrying out BRAC decisions are interrelated. Existing partnerships may need to expand to include state officials because of their environmental, historic preservation, and economic development responsibilities. Military-community partnerships need to be flexible enough to adapt to the specific market forces and other circumstances at each location.
- **Speak with one voice.** The Department, executing disposal and reuse activities through the Military Departments and Defense Agencies, will provide clear and timely information through single focal points and will encourage affected communities to do the same. Timely information regarding facility and environmental conditions and closure and realignment schedules are critically important. In the past, when communities spoke with one voice about their reuse goals and activities, the Department was better positioned to consider local redevelopment plans. This was also true when installations and communities experienced substantial personnel increases. The Department recognizes that installation base commanders and local officials need to integrate elements of their growth planning so that appropriate off-base facilities and services are available for arriving personnel and their families.

Information About BRAC

The Department recognizes that BRAC decisions and their implementation are of high public interest. To keep information as current as possible, the Department maintains a BRAC 2005 website (www.defenselink.mil/BRAC). The Department's Office of Economic Adjustment (OEA) also maintains a website (www.oea.gov). Information on the OEA site could prove useful to local communities during their initial planning phases.

Concerns about the implementation of BRAC decisions are numerous and based on very installation-specific circumstances. For many of these concerns, sufficient information may be available only after BRAC decisions are finalized and installation-specific implementation plans

are developed. The Department, however, has highlighted three particular areas for attention: assistance for personnel, environmental responsibilities, and assistance for affected communities.

Assistance for Personnel

One of the Department's challenges at installations subject to BRAC decisions is the fair and effective management of human resources. The closure of installations with the potential for separating a large number of civilian employees presents major challenges to commanders and human resource personnel. While these installations will still have missions to accomplish, the employees will be stressed about their careers and employment security. In this atmosphere, productivity will suffer and the employees' overall quality of life may diminish. The Department has a number of mitigating placement, transition, and worker assistance programs to draw from, including the following:

- The Priority Placement Program provides for the referral and mandatory placement of displaced employees who are qualified for other vacancies within the Department. Other programs provide various types of referral and priority considerations for Defense and other Federal agencies' job vacancies.
- The Department's permanent Voluntary Early Retirement Authority allows eligible employees to retire early and receive a reduced annuity.
- The Voluntary Separation Incentive Program (with a cash payment) authorizes the Department to encourage displaced employees to separate voluntarily by resignation or retirement to avoid an involuntary separation of another employee.
- The Department's Homeowners Assistance Program provides financial assistance to relocating military and DoD civilians when they must sell their homes in a market that has been adversely impacted by a BRAC action.
- The U.S. Department of Labor provides funding for assistance to displaced Federal employees. Under the Workforce Investment Act, assistance may include counseling, testing, placement assistance, retraining, and other related services. This assistance is available through the appropriate state employment security agencies.

Military commanders and human resource personnel have learned from previous BRAC rounds the importance of stressing job placement and training to employees. When dislocations are likely to be large, establishing transition assistance offices at the installation encourages a strong partnership for providing the range of programs available from the Department of Labor and the Military Departments.

Realigning and Closing Bases: Environmental Responsibilities

The Department intends to transfer BRAC property expeditiously for reuse. However, the Department will comply with the National Environmental Policy Act (NEPA), which requires all Federal agencies to identify and consider possible environmental impacts of proposed reuse activities before transferring any real property. This analysis will also include the potential impacts on historical and cultural resources. While NEPA does not apply to the BRAC decisions themselves, the Act does require an environmental analysis for each installation receiving additional functions. Any mitigation that may be required will be identified and considered for implementation.

The Military Departments are responsible for environmental remediation of closing installations. Early in the implementation process, the Military Departments will assess and document the environmental condition of all transferable property in terms of the extent of contamination and the current phase of any remedial or corrective action.

If no remedial action on the installation is required, surplus real estate may be transferred. If remediation is required, the Military Department may complete the work before the transfer, or alternatively, with agreement from the affected community, the remediation to current use standards may be completed after transfer. Some property transfer negotiations have the new owner managing cleanup as a part of the redevelopment process. With regulatory concurrence, remediation and redevelopment activities may be integrated, potentially saving time and money. An ideal candidate for this type of transfer is property that has manageable environmental contamination, is readily marketable, and has community and regulator support.

Assistance for Communities

From a community's perspective, BRAC actions take several forms -- complete closure, partial closure, realignment with a loss, and realignment with gains. Complete closure means the end of the military use of the property. Realignment actions, from a community view, take two distinct forms--either gaining or losing jobs. During a gaining realignment, a community will experience growth as it receives an additional military presence. On the other hand, a losing realignment action may mean reducing a large military presence in a community but not closing the installation in its entirety. In those cases, real property may become available for civilian reuse.

From both the military and community perspectives, the challenges posed by losing scenarios, i.e., closures or realignments, differ from those posed by growth realignments. The Department's Office of Economic Adjustment (OEA) is prepared to help a community adjust to a significant BRAC action whether a loss or a gain. Such assistance from the Department and other Federal agencies is designed to facilitate the organization, planning, and execution of community-based adjustment strategies.

State and local officials may request OEA assistance. OEA maintains information on all aspects of local economic adjustment through a series of written documents, available on the OEA website--www.oea.gov.

Realignments With Growth at Receiving Installations

Significant personnel increases at a military installation may substantially increase demands on community services and facilities. These demands could affect current residents. For example, off-base housing scarcity and over-crowded schools have been major areas of concern shared by both the military and the community.

In a number of cases, the community will clearly be able to accommodate growth because the number and timing of arriving personnel is less than the community's excess capacity and near-term capability for expansion. This situation is not always the case, however. If questions arise regarding support capacity, OEA is prepared to assist communities in formulating growth management plans.

An essential first step for the community is forming a partnership with the military installation so that information and expectations can be shared. The preparation of a growth management plan involves study and analysis as well as participation by community leaders so that growth strategies get the support necessary for implementation. The overall goal is to formulate and implement a community adjustment strategy so that the off-base impacts of significant military expansions can be accommodated in a timely manner.

Closures and Losing Realignments

BRAC actions can affect local communities in terms of reduced economic activity and job cutbacks. In the previous four rounds, many BRAC actions had a negligible effect on the surrounding community's economy. However, over 100 BRAC actions significantly affected the local community, triggering a coordinated program of federal assistance from the Department of Defense and other Federal agencies.

Jobs gained through the economic redevelopment of former installations can be critically important to mitigate the impact of BRAC actions. Civilian redevelopment is often the single most important opportunity for an affected community to overcome adverse impacts while building upon a community's strengths and opportunities.

To ease the economic effects on communities, the Department seeks to close installations as expeditiously as possible. This strategy makes property available for community redevelopment objectives and also saves DoD resources. For some communities, surplus military installations represent advantageously located real estate in the midst of rapidly growing and prosperous local economies. For other communities, opportunity may be difficult to recognize initially. No matter the situation, the redevelopment of a former military installation is often a complex effort.

Because the needs of affected communities vary so greatly, the Department is prepared to assist communities in a variety of ways:

- In terms of planning, the Department provides detailed information on the condition of an installation so that community redevelopment plans and potential users can identify baseline conditions and any required environmental cleanup needs.

- While job creation, new business development, and tax-base expansion are common redevelopment goals adopted in communities, public use facilities may also be part of a base's redevelopment. Federal property laws provide a variety of property transfer mechanisms to satisfy and support diverse redevelopment scenarios.
- During the past four rounds of BRAC, OEA provided about \$280 million in economic planning and redevelopment assistance to local communities. Other Federal agencies provided approximately \$1.6 billion in coordinated grant assistance: Federal Aviation Administration (\$760 million); the Commerce Department's Economic Development Administration (\$611 million); and the Labor Department's Employment and Training Administration (\$223 million).

Redeveloping a military base becomes an opportunity for community leaders to reinvent the base's usefulness and prosper from a diverse range of new civilian activities. The Department provides important assistance for reuse planning and property transfer. Other Federal agencies can provide additional help in acquiring and redeveloping base property. States have assisted community efforts with technical and financial assistance and direct participation in redevelopment efforts. Most importantly, closed bases find new life through the commitment of community leaders to create and sustain a widely shared vision for base redevelopment.

The successful redevelopment of surplus military property does not occur without a genuine partnering between the Military Departments and the communities that will absorb the former installations. Likewise, it is important to recognize that this necessary Military-community partnership needs to be flexible to adapt to the specific market forces and private sector circumstances found at each location. Government agencies at all levels can bring critical knowledge and resources to this effort. The private sector's entrepreneurial perspective and capital ultimately turn reuse visions into viable economic redevelopment and job creation.

CRS Report for Congress

Received through the CRS Web

Base Realignment and Closure (BRAC): Property Transfer and Disposal

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Summary

The Defense Base Realignment and Closure Act of 1990 and the Federal Property and Administrative Services Act of 1949 provide the basic framework for the transfer and disposal of military installations closed during the base realignment and closure (BRAC) process. This report provides an overview of the various authorities available under the current law and describes the planning process for the redevelopment of BRAC properties. This report will be updated as events warrant.

Introduction

The nation's military installations have gone through several rounds of base realignments and closures (BRAC), the process by which excess military facilities are identified and, as necessary, transferred to other federal agencies or disposed of, placing ownership in non-federal entities. Since the enactment of the Defense Base Closure and Realignment Act of 1990, transfer or disposal of former military installations has been governed by relatively consistent legal requirements. On December 28, 2001, the most recent changes to the BRAC framework were signed into law (P.L. 107-107)¹, providing for a new round of base closures in 2005.

The current BRAC law is generally similar to the original statute and retains many of the transfer and disposal authorities that were available in previous rounds. However, significant amendments in 1999 and 2001 altered portions of the law's disposal authorities. This report will provide an overview of the transfer and disposal authorities available under the law for military installations that may be closed during the 2005 round

¹ National Defense Authorization Act For Fiscal Year 2002, Act of December 28, 2001, P.L. 107-107, 115 Stat 1012 (current version at 10 U.S.C. § 2687 note). For ease of reference, all citations to the 1990 Act are to the relevant sections of the act as it appears in the note following 10 U.S.C. § 2687.

and indicate how recent amendments to the Defense Base Closure Act have altered the property transfer and disposal process.² It will be updated as events warrant.

Transfer and Disposal Authorities

The transfer or disposal of federal property is primarily performed by the General Services Administration (GSA) pursuant to the Federal Property and Administrative Services Act of 1949 (FPASA).³ The Defense Base Closure and Realignment Act directs the GSA to delegate its statutory authority to the Department of Defense (DOD) with respect to BRAC installations, and DOD has, in turn, delegated this authority to the various military services.⁴ Thus, BRAC property transfer and disposal is performed, generally, in accordance with the FPASA and the GSA regulations implementing it. In addition, the Defense Base Closure and Realignment Act authorizes DOD, with GSA approval, to supersede GSA regulations with BRAC-specific regulations.⁵ The FPASA process for BRAC properties is discussed below.

Federal Screening. The first step in the property transfer process begins when the military service in possession of a BRAC property notifies other DOD branches that property has become available.⁶ If another branch of DOD determines that it requires the property and if Secretary of Defense concurs, intragency transfer may occur with or without reimbursement.⁷ If no DOD branch requires the property, it is deemed “excess” and a notice of its availability is sent to all other federal agencies.⁸ If no federal agency pursues acquisition within the specified time frame or if DOD exercises residual authority to deny the request for transfer, the property is determined to be “surplus” and the disposal process begins.⁹

Local Redevelopment Authorities (LRAs). An LRA is “[a]ny authority or instrumentality established by a State or local government and recognized by the Secretary of Defense ... as the entity responsible for developing the redevelopment plan” with

² It should be noted that significant issues related to environmental cleanup under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) exist at some BRAC properties and that the use of certain property transfer authorities may be contingent upon adequate performance of CERCLA obligations or agreement by the acquiring entity to accept liability for environmental cleanup. *See* 42 U.S.C. § 9620(h); P.L. 107-107, § 3006.

³ Act of June 30, 1949, ch. 288, 63 Stat. 377. Transfer and disposal authority is codified at 40 U.S.C. §§ 521-559.

⁴ Defense Base Closure and Realignment Act, § 2905(b); 32 C.F.R. §175.6 (2004).

⁵ Defense Base Closure and Realignment Act, § 2905(b).

⁶ 32 C.F.R. § 175.7(4).

⁷ Defense Base Closure and Realignment Act, § 2905(b).

⁸ “Excess” property is defined as “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.” 32 C.F.R. §175.3(e).

⁹ “Surplus” property is defined as “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.” 32 C.F.R. § 175.3(i).

respect to an installation closed under the BRAC process.¹⁰ Briefly, upon the conclusion of the federal screening process, LRAs are to conduct outreach efforts and design a comprehensive plan for reuse of BRAC property, culminating in a redevelopment plan.¹¹ The redevelopment plan is not binding upon DOD; indeed, DOD is ultimately responsible for preparing an environmental impact analysis under the National Environmental Policy Act (NEPA), in which it must examine all reasonable disposal alternatives, and make its own disposal decisions.¹² However, it is worth noting that DOD is statutorily obligated to give the LRA's redevelopment plan considerable weight in making its own disposal determinations. Specific requirements impacting the planning process and eventual disposal of property are discussed below.

Homeless Assistance. The Stewart B. McKinney Homeless Assistance Act¹³ allows "excess," "surplus," "unutilized," or "underutilized" federal property to be used as homeless shelters, and has been applicable to BRAC properties closed in prior rounds.¹⁴ A separate process is now provided for properties closed after October 25, 1994 (the date of enactment for Base Closure Community Development and Homeless Assistance Act of 1994).¹⁵ To comply with the older McKinney Act provisions, DOD was required to submit a description of its vacant base closure properties to the Department of Housing and Urban Development (HUD).¹⁶ HUD would then determine whether any of this property was "suitable for use to assist the homeless."¹⁷ The HUD determination would be published in the *Federal Register*, at which time qualified "representatives of the homeless" could apply for and receive the requested property.¹⁸

As stated, amendments to the Defense Base Closure and Realignment Act now displace the traditional McKinney Act implementation requirements. The Secretary of Defense is now directed to publish notice of the available property and to submit information on that property to HUD and any local redevelopment authority.¹⁹ All interested parties, including representatives of the homeless, are then to submit to the local redevelopment authority a notice of interest in the property.²⁰ Simultaneously, redevelopment authorities are to perform outreach efforts and provide assistance in evaluating property for various reuse purposes. After complying with these requirements and the statutorily imposed information collection time frames, the redevelopment

¹⁰ 32 C.F.R. § 176.5.

¹¹ 32 C.F.R. § 176.20.

¹² 42 U.S.C. § 4321 *et seq.*

¹³ 42 U.S.C. § 11411.

¹⁴ *Id.* § 11411(a).

¹⁵ P.L. 103-421, 108 Stat. 4346 (1994).

¹⁶ Defense Base Closure and Realignment Act, § 2905(b); 32 C.F.R. § 175.6(b).

¹⁷ *Id.*

¹⁸ *See National Law Center on Homelessness and Poverty v. U.S. Dept. of Veterans Affairs*, 964 F.2d 1210, 1212 (D.C.Cir.1992).

¹⁹ Defense Base Closure and Realignment Act, § 2905(b).

²⁰ *Id.*

authority must prepare a redevelopment plan, which considers “the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority”²¹ The redevelopment authority next submits the plan to the Secretary of HUD and the Secretary of Defense for review. The Secretary of HUD is authorized to review the plan, to negotiate with the redevelopment authority for changes, and ultimately must determine, based on statutorily prescribed factors, whether the plan is acceptable.²² Upon HUD approval, the base redevelopment plan, including any homeless assistance component and agreement to implement no cost homeless assistance property conveyances, are submitted to DOD. Again, it would appear that DOD, giving “substantial deference to the redevelopment plan concerned,” may develop its own disposal plan.²³

Public Benefit Transfers. Public benefit transfers are authorized under FPASA and allow for the conveyance of property at a discount for specified public purposes.²⁴ Various agencies oversee these programs and are authorized to approve a state’s application for acquisition under them.²⁵ The military departments are required to inform these agencies of potentially available property and transmit any expression of interest to the relevant LRA.²⁶ LRA’s are encouraged to work with the public benefit transfer agencies and must consider any expression of interest, although they are not required to include it in a redevelopment plan.²⁷ All the same, it would appear the DOD must consider these options when examining disposal alternatives even though it would not appear that a public benefit transfer proposal must be accepted by DOD with respect to BRAC property.²⁸

Public Auction and Negotiated Sale. In addition to the public benefit transfer, additional disposal authorities exist. In accordance with FPASA, DOD may dispose of BRAC property via public auction or through a negotiated sale with a single purchaser.²⁹ The public auction process requires public advertising for bids under such terms and conditions as to permit “full and free competition consistent with the value and nature of the property involved.”³⁰ Further, if adequate bids are received and disposal is in the public interest, the bid most advantageous to the federal government is to be accepted. A negotiated sale is permissible if a series of conditions are met. Generally, negotiated sales are permissible when: (1) a public auction would not be in the public interest; (2) public auction would not promote public health, safety, or national security; (3) a public

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See 4 U.S.C. §§ 550-554. These include uses for airports, highways, education, wildlife and environmental preservation, and public health purposes.

²⁵ *Id.*

²⁶ 32 C.F.R. § 176.20(d).

²⁷ *Id.*

²⁸ Defense Base Closure and Realignment Act, § 2905(b); 32 C.F.R. § 176.45.

²⁹ 40 U.S.C. § 545.

³⁰ *Id.*

exigency makes an auction unacceptable; (4) public auction would adversely impact the national economy; (5) the character of the property makes public auction impractical; (6) public auction has failed to produce acceptable bids; (7) fair market value does not exceed \$15,000; (8) disposal is to a state, territory, or U.S. possession; or (9) negotiated sale is authorized by other law.³¹ It is also worth noting that even if one of these conditions is met, there is frequently an additional requirement that fair market value and other satisfactory terms can be obtained through negotiation.

Economic Development Conveyances (EDCs). In addition to FPASA authorities, the Defense Base Realignment and Closure Act has since its enactment provided for EDCs in one form or another. Under its EDC authority, DOD may dispose of BRAC property for less than fair market value.³² From 1994 until the 1999 and 2001 amendments to the Defense Base Closure and Realignment Act, the Secretary of Defense was authorized to “transfer real property and personal property located at a military installation to be closed ... to the redevelopment authority ... for consideration at or below the fair market value of the property transferred or without consideration.”³³ The reduced or no cost conveyance was authorized when it was determined to be necessary to support economic development and when DOD could show that other transfer authorities were insufficient.³⁴

The 1999 and 2001 amendments³⁵ significantly altered the requirements of the EDC. Under section 2905(b) of the Defense Base Closure and Realignment Act, the broad discretion of the Secretary of Defense to authorize reduced or no consideration economic development conveyances has been replaced by what is arguably a more restrictive scheme. The law now states: “the transfer of property of a military installation. . . may be without consideration” but only when the transferee agrees to specified terms.³⁶ These terms include a requirement that a transferee use the proceeds from certain future sales or leases of the acquired property to support economic redevelopment at the former installation.

Further, under the new legislation, while no consideration transfers remain a possibility as described above, the Secretary is also now required to “seek to obtain consideration in connection with any transfer . . . in an amount equal to the fair market

³¹ *Id.*

³² Additionally, a no consideration transfer was required when a closure was to take place in a rural area and would cause “a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for economic recovery” P.L. 103-160, § 2903, *amended by* P.L. 106-65). For a thorough discussion of the policy behind the EDC, see Randall S. Beach, *Swords to Plowshares: Recycling Cold War Installations*, 15 PROB. & PROP. 58 (2001).

³³ P.L. 103-160, § 2903 (1994).

³⁴ *Id.*

³⁵ Act of October 5, 1999, P.L. 106-65, 113 Stat 512; P.L. 107-107, § 3006. Bases closed under previous BRAC law but still owned by the Department of Defense may be included under the new statutory framework, and certain existing contracts may be modified to comply with the updated law.

³⁶ P.L. 106-65, § 2821, *amended by* P.L. 107-107.

value of the property, as determined by the Secretary.”³⁷ The provision does not explicitly state what the Secretary must do to fulfill this requirement. However, when read in conjunction with the authorization for no consideration transfers, the requirement to seek fair market value would appear to leave open the possibility of a no consideration transfer so long as a reasonable attempt to find or negotiate another transaction is unsuccessful. Another significant change is the apparent elimination of the statutory requirement that DOD justify its decision to use its EDC authority and not a public auction or negotiated sale.³⁸ Exactly how this change would affect procedures when read in conjunction with the requirement that DOD seek fair market value must be deemed an open question at present.

Conclusion

In sum, the transfer and disposal process for 2005 round BRAC properties is primarily governed by the Defense Base Closure and Realignment Act, as amended, and the Federal Property and Administrative Services Act. The process first requires screening to determine if other DOD branches or federal agencies have a need for the property. In the event that property is not transferred in this manner, it is deemed surplus and may be disposed of pursuant to other authorities. Compliance with these disposal authorities will generally require some form of homeless assistance screening and public benefit transfer analysis. DOD is directed to take into consideration multiple factors in determining which authority to use but would appear to be ultimately responsible for making final determinations. Public auctions and negotiated sales are generally available, although it would appear that fair market value must generally be obtained under these authorities. Economic development conveyances may be authorized as well, which may be made for no consideration, contingent upon certain conditions of transfer.

³⁷ P.L. 107-107, § 3006.

³⁸ P.L. 106-65, § 2821(a)(3).



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Prev | Next

TITLE 42 > CHAPTER 119 > SUBCHAPTER V > § 11411

§ 11411. Use of unutilized and underutilized public buildings and real property to assist the homeless

Release date: 2005-02-25

(a) Identification of suitable property The Secretary of Housing and Urban Development shall, on a quarterly basis, request information from each landholding agency regarding Federal public buildings and other Federal real properties (including fixtures) that are excess property or surplus property or that are described as unutilized or underutilized in surveys by the heads of landholding agencies under section 524 (a)(2) and (3) of title 40. No later than 25 days after receiving a request from the Secretary, the head of each landholding agency shall transmit such information to the Secretary. No later than 30 days after receiving such information, the Secretary shall identify which of those buildings and other properties are suitable for use to assist the homeless.

(b) Availability of property

(1) The Secretary shall promptly notify each Federal agency with respect to any property of that agency that the Secretary has identified under subsection (a) of this section. No later than 45 days after receipt of such a notice, the head of the appropriate landholding agency shall transmit to the Secretary the agency's response to property identifications contained in such notification, which shall include—

(A) in the case of unutilized or underutilized property—

- (i)** a statement of intention to determine the property excess to the agency's needs;
- (ii)** a statement of intention to make the property available for use to assist the homeless; or
- (iii)** a statement of the reasons (including a full explanation of the need) the property cannot be determined excess to the agency's needs or made available for use to assist the homeless; and

(B) in the case of excess property—

- (i)** a statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or
- (ii)** a statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the

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Notes
Updates
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(CFR)
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property is not presently available for use to assist the homeless.

(2)

(A) All properties identified by the Secretary under subsection (a) of this section shall be available for application—

(i) in the case of property other than surplus property, for use to assist the homeless in accordance with the provisions of this section; and

(ii) in the case of surplus property, for use to assist the homeless either in accordance with this section or as a public health use in accordance with section 550 (a)–(d) of title 40.

(3) The Secretary shall maintain a written public record of—

(A) the identification of buildings and other properties by the Secretary under this subsection and the reasons for such identifications; and

(B) the responses of landholding agencies to such identifications.

(c) Publication of properties

(1)

(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall publish in the Federal Register—

(i) a list of all properties reviewed by the Secretary under subsection (a) of this section; and

(ii) a list of all properties that are available under subsection (b)(2) of this section for application for use to assist the homeless.

(B) Each publication of properties shall include a description and the location of each property (including the address and zip code) and the current classification of each property as unutilized, underutilized, excess property, or surplus property.

(C) The Secretary shall make available to the public upon request all information in the possession of the Department of Housing and Urban Development (other than valuation information), regardless of format, about all properties reviewed and not identified as being suitable for use to assist the homeless, including the reasons such properties were not so identified.

(D) The Secretary shall publish separately, on an annual basis, all properties identified as being suitable for use to assist the homeless, but reported to be unavailable, and

the reasons such properties were unavailable.

(2)

(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall transmit a copy of the list of available properties published under paragraph (1)(A)(ii) to the Interagency Council on the Homeless. The Council shall immediately distribute to all State and regional homeless coordinators area-relevant portions of the list.

(B) The Secretary, the Administrator, and the Secretary of Health and Human Services shall make such efforts as are necessary to ensure the widest possible dissemination of the information on such list.

(C) The Secretary shall establish a toll-free number to provide the public with specific information about properties on such list.

(3) The Secretary shall make available to the public upon request all information (other than valuation information) regardless of format in the possession of the Department of Housing and Urban Development about the properties published under paragraph (1)(A), including environmental assessment data. The Secretary shall maintain a current list of agency contacts for making referrals of inquiries for information about specific properties.

(4)

(A) On December 31 of each year, the head of each landholding agency shall report to the Secretary the current availability status and the current classification of each property controlled by the agency, that—

(i) was included in a list published in that year by the Secretary under paragraph (1)(A)(ii); and

(ii) remains available for application for use to assist the homeless or has become available for application during that year.

(B) No later than February 15 each year, the Secretary shall publish in the Federal Register a list of all properties reported under subparagraph (A) for the preceding year and the current classification of the properties.

(C) For purposes of subparagraph (A), property shall not be considered to remain available for application for use to assist the homeless after the 60-day holding period provided under subsection (d) of this section if—

(i) an application for or written expression of interest in the property is made under any law for use of the property for any purpose; or

(ii) the Administrator receives a bona fide offer to purchase the property or advertises for the sale of the

property by public auction.

(d) Holding period

(1) Properties published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of such publication.

(2) If written notice of intent to apply for such a property for use to assist the homeless is received by the Secretary of Health and Human Services within the 60-day period described under paragraph (1), such property may not be made available for any other purpose until the date the Secretary of Health and Human Services or other appropriate landholding agency has completed action on the application submitted under subsection (e) of this section with respect to that written notice of intent.

(3) Property that is reviewed by the Secretary under subsection (a) of this section and that is not identified by the Secretary as being suitable for use to assist the homeless may not be made available for any other purpose for 20 days after the determination of unsuitability to allow for review of the determination at the request of the representative of the homeless. The Secretary shall disseminate immediately this information to the regional offices of the Department of Housing and Urban Development and to the Interagency Council on the Homeless.

(4)

(A) Written notice of intent to apply for a property published under subsection (c)(1)(A)(ii) of this section may be filed at any time after the 60-day period described in paragraph (1) has expired. In such case, an application submitted pursuant to the notice may be approved for disposal for use to assist the homeless only if the property remains available for application for use to assist the homeless. If the property remains available, the use to assist the homeless shall be given priority of consideration over other competing disposal opportunities under sections 541–555 of title 40, except as provided in subsection (f)(3)(A) of this section.

(B) Surplus property for which an application has been approved shall be assigned promptly to the Secretary of Health and Human Services for disposition in accordance with and subject to subsection (f) of this section.

(e) Application for property

(1) A representative of the homeless may submit an application to the Secretary of Health and Human Services for any property that is published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless.

(2) No later than 90 days after the submission of written notice of intent to apply for a property, an applicant shall submit a complete application to the Secretary of Health and Human Services. The Secretary of Health and Human Services shall, with the concurrence of the appropriate landholding agency, grant reasonable extensions.

(3) No later than 25 days after receipt of a completed application, the Secretary of Health and Human Services shall review, make all determinations, and complete all actions on the application. The Secretary of Health and Human Services shall maintain a written public record of all actions taken in response to an application.

(f) Making property available to representatives of homeless

(1) Subject to the provisions of this subsection, property for which the Secretary of Health and Human Services has approved an application under subsection (e) of this section shall be made promptly available by permit or lease, or by deed as a public health use under section 550 (a)-(d) of title 40, to the representative of the homeless that submitted the application.

(2) Unutilized or underutilized property that is the subject of an agency's statement of intention under subsection (b)(1)(A) (ii) of this section shall be made promptly available by the appropriate landholding agency to the approved applicant by lease or permit for a term of not less than 1 year, unless the applicant requests a shorter term.

(3)

(A) In disposing of surplus property by deed or lease under sections 541-555 of title 40, the Administrator and the Secretary of Health and Human Services shall give priority of consideration to uses to assist the homeless, unless the Administrator or the Secretary of Health and Human Services determines that a competing request for the property under section 550 of title 40 is so meritorious and compelling as to outweigh the needs of the homeless.

(B) Whenever the Administrator or the Secretary of Health and Human Services makes a determination under subparagraph (A), the Administrator or the Secretary of Health and Human Services shall transmit to the appropriate committees of the Congress an explanatory statement detailing the need satisfied by conveyance of the surplus property and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) For any property made available by lease to a representative of the homeless before November 29, 1990, the Secretary of Health and Human Services may, upon written request by the representative, convey such property by deed to the representative in accordance with, and subject to the

requirements of, section 550 of title 40. The lease term shall not be affected if a deed is not granted.

(g) Records The Secretary shall maintain a written public record of—

- (1)** the reasons for determinations of the Secretary under this section that property is suitable or unsuitable for use to assist the homeless; and
- (2)** the responses of landholding agencies under subsection (b)(1) of this section.

(h) Applicability to property under base closure process

(1) The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) For provisions relating to the use to assist the homeless of buildings and property located at certain military installations approved for closure under such Act, or under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note), before October 25, 1994, see section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(i) Definitions For purposes of this section—

- (1)** the term "Administrator" means the Administrator of General Services;
- (2)** each of the terms "excess property" and "surplus property" has the meaning given that term under section 102 of title 40;
- (3)** the term "landholding agency" means a Federal department or agency with statutory authority to control real property;
- (4)** the term "representative of the homeless" means a State or local government agency, or private nonprofit organization, which provides services to the homeless; and
- (5)** the term "Secretary" means the Secretary of Housing and Urban Development, except as otherwise provided.

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DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF 1990
(As amended through FY 05 Authorization Act)

SEC. 2901. SHORT TITLE AND PURPOSE

(a) **SHORT TITLE.**--This part may be cited as the "Defense Base Closure and Realignment Act of 1990".

(b) **PURPOSE.**--The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

SEC. 2902. THE COMMISSION

(a) **ESTABLISHMENT.**--There is established an independent commission to be known as the "Defense Base Closure and Realignment Commission".

(b) **DUTIES.**--The Commission shall carry out the duties specified for it in this part.

(c) **APPOINTMENT.**--(1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise and consent of the Senate.

(B) The President shall transmit to the Senate the nominations for appointment to the Commission--

(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with--

(A) the Speaker of the House of Representatives concerning the appointment of two members;

(B) the majority leader of the Senate concerning the appointment of two members;

(C) the minority leader of the House of Representatives concerning the appointment of one member; and

(D) the minority leader of the Senate concerning the appointment of one member.

(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

TABLE OF CONTENTS
 DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF 1990
 (PUBLIC LAW 101-510), AS CODIFIED AT 10 U.S.C. 2687 NOTE,
 AS AMENDED BY FY 2002 DEPARTMENT OF DEFENSE AUTHORIZATION ACT
 (PUBLIC LAW 107-107)

	<u>Page</u>
1. Appointment of BRAC Commissioners	1
2. Pay Levels and Travel Expenses for Commissioners & Staff	2-3
3. Force-Structure Plan	4
4. Selection Criteria	5
a. See also Selection criteria for 2005 BRAC Round	36-37
5. DoD Recommendation to the BRAC Commission	5-6
6. Review of DoD Recommendations by the BRAC Commission	6-7
7. Congressional Joint Resolution (of Disapproval)	8-9
a. See also Congressional Consideration of BRAC Report	30-32
8. Management and Disposal of Property	9-23
9. Redevelopment Authority	14-23
10. National Environmental Policy Act (NEPA)	22-24
11. Transfer Authority Re: Paying Environmental Remediation Costs	24-25
12. DoD Base Closure Account 1990	24-25
13. DoD Base Closure Account 2005	28-30
14. Other Restrictions on Base Closure Authority	32
15. Definitions	33
16. 2005 Round of Base Closures and Realignments	34-38
a. DoD Certification of Need for 2005 Closures	35
b. Nominating 2005 BRAC Commissioners	35-36
c. Selection Criteria	36-37
d. Military Value Criteria	36
e. Other Criteria	36
17. Special Procedures for 200 BRAC Round	37-39
a. Preparation of Recommendations	37-38
b. Voting by BRAC Commissioners on Adding Installations	38
c. GAO Report	38-39
d. President's Review	39


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- [12 CFR 22](#)
- [12 CFR 339](#)
- [12 CFR 572](#)
- [12 CFR 614](#)
- [12 CFR 760](#)
- [45 CFR 12](#)
- [45 CFR 12a](#)



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101ST CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
101-923

NATIONAL DEFENSE AUTHORIZATION
ACT FOR FISCAL YEAR 1991

CONFERENCE REPORT

TO ACCOMPANY

H.R. 4739



OCTOBER 23, 1990.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990

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potential for civilian reuse, or, assuming continued military activi-
 ty, joint military-civilian use.

The House bill contained no similar provision.

The House recedes with an amendment that would ensure that
 all interested authorizing committees of Congress receive copies of
 the aircraft evaluation.

*Negotiations for joint civilian and military use of the airfield at
 Wheeler Air Force Base, Hawaii (sec. 2867)*

The Senate amendment contained a provision (sec. 2827) that
 would direct the Secretary of the Navy to enter into negotiations
 with the state of Hawaii to develop an agreement for joint military
 and civilian use of the aviation facilities at Barbers Point Naval
 Air Station, Hawaii.

The House bill contained no similar provision.

The House recedes with an amendment that would direct the
 Secretary of Defense to enter into negotiations with the state of
 Hawaii to develop an agreement for joint military and civilian use
 of Wheeler Air Force Base, Hawaii, instead of Barbers Point Naval
 Air Station, Hawaii.

*Extension of termination date for land conveyance at Eglin Air
 Force Base, Florida (sec. 2868)*

The conferees agree to a provision that would extend for three
 years the authority of the Secretary of the Air Force Base, Florida,
 which will clarify the installation's boundaries and settle associat-
 ed claims.

TITLE XXIX—BASE CLOSURES AND REALIGNMENTS

PART A—DEFENSE BASE CLOSURES AND REALIGNMENT COMMISSION

LEGISLATIVE PROVISIONS ADOPTED

Defense Base Closure and Realignment (secs. 2901-2911)

The House bill contained a provision (sec. 2831) that would direct
 the following:

1. The Secretary of Defense would formulate a five-year force
 structure plan for the armed forces based upon the prospective
 threat and funding levels, and a plan to implement the associ-
 ated reductions and closures of overseas military installations.

2. As a part of the defense budget request for fiscal years
 1992 and 1993, the Secretary would provide the Congress the
 force structure plan, a list of overseas installations to be re-
 duced or closed, and legislative proposals to establish a fair
 process of selecting military installations within the United
 States for closure or realignment, as well as proposals for the
 mitigation to communities and individuals adversely affected
 economically by such closures.

3. The Defense Department would be precluded from study-
 ing or implementing base closures or realignments of installa-
 tions within the United States (excluding those being carried
 out under Public Law 100-526 or those which do not meet the
 thresholds contained in section 2687 of title 10, United States

Code) until January 1, 1992, or until specifically authorized by Congress during the 102nd Congress, whichever occurs first.

4. The Defense Department would be directed to maintain the level of funding for facility repair and maintenance of military installations within the United States at no less than 75 percent of the average funding level for these installations between fiscal years 1985 and 1989.

5. The Secretary of Defense would be directed not to use the list of closure and realignment proposals which was transmitted to Congress on January 29, 1990, as the basis for any decisions concerning mission, personnel, or resource allocations. To the extent that the missions at installations on this list have been reduced or facility development and maintenance have been curtailed, the Secretary would be directed to remedy this damage.

6. Alter the current statute concerning base closures and realignments (10 U.S.C. 2687) to establish a two-year period in which to determine personnel reduction thresholds, and to clarify the applicability of this statute to defense agency activities being conducted in leased facilities.

The Senate amendment contained a provision (sec. 2805) that would amend section 2687 of title 10, United States Code, regarding the process of closing and realigning military installations. In codifying several of the streamlining provisions of the Base Closure and Realignment Act of 1988 (Public Law 100-526), the provision would establish a base closure account, direct the delegation of property disposal authority from the Administrator of General Services to the Secretary of Defense, and make the National Environmental Policy Act inapplicable to the decision to close installations.

The House recedes with an amendment that would establish a new process to deal with the closure and realignment of military installations within the United States. This process would be used biennially and remain in effect for six years. It would include public and Congressional review of the criteria used by the Secretary of Defense to select bases to propose for closure or realignment, and an independent commission which will publicly evaluate these closure and realignment proposals and report its findings to the President. The conferees expect the Secretary to justify any closure or realignment proposal made to the Commission with detailed analysis such as is currently required under section 2687 of title 10, United States Code, as well as a close linkage between the closure or realignment proposal and both the force structure plan and the criteria. Under the new process, both the President and the Congress would have opportunities to accept or reject the Commission's recommendations in their entirety under expedited procedures.

Any congressional disapproval of either the proposed criteria or the Commission's recommendation must be accomplished through a joint resolution, which requires the signature of the President or a two-thirds majority of both Houses of Congress in the case of a Presidential veto.

The conferees agree to clarify current base closure law to specifically apply to Department of Defense activities which occupy

leased facilities. They also add the establishment of a base disposal authority from the Secretary of Defense, and a total impact analysis process and actions.

The conferees prescribe a new process and realignments under closures and realignments that involve numerous opportunities for study transmitted on January 29, 1990, raised suspicions about the selection process. A new process commission will permit base and realignment in a rational manner.

The conferees expect the new selection process, grounded in the criteria approved under the process appeared on the January 29, 1990 proposed list, the conferees expect all bases in the United States further expect that bases on the list operated and maintained while in the process.

The test for the Commission is the Secretary for closure and realignment deviated substantially from the criteria in making the recommendations.

The process established in the United States. The Department of Defense to move aggressively to close bases overseas where U.S. national security depends in no small measure on the credibility of the domestic base process.

The conference agreement shall make available to the General of the United States Commission in making its recommendations to the General Accounting Office to permit the staff of the Services are conducting bases for closure and realignment. GAO will be able to report to how the process was conducted requirements. The conferees permitted to attend meetings or in the process. GAO is expected under this process through its officials and analyzing documents.

The base closure process could be a constitutional pitfall of excess. First, Congress is not really dependent of the criteria by which

specifically authorized by whichever occurs first. The bill is directed to maintain and maintenance of military facilities at no less than 75 percent of these installations be-

directed not to use the authority which was transmitted on the basis of any decision on resource allocations. To the extent that the bill directs on this list have and maintenance have been directed to remedy this

including base closures and within a two-year period in order to meet thresholds, and to direct the defense agency activi-

provision (sec. 2805) that the States Code, regarding military installations. In codifying the Base Closure Authority (10 U.S.C. 2600-526), the provision directs the delegation of authority to the Administrator of General Services and the National Environmental Restoration Administration to close installa-

that would establish a process for the alignment of military facilities. The process would be used to determine whether the current force structure plan meets the criteria used by the Secretary of Defense for closure or realignment. The Secretary will publicly evaluate the force structure plan and report its findings to the Commission to justify any closure or realignment. The Commission will report its findings to the President and the Secretary of Defense under section 2687 of the National Defense Authorization Act of 1990. The linkage between the force structure plan and the President and the Secretary of Defense to accept or reject the Commission's recommendations is expedited procedure.

The proposed criteria or process to be accomplished through the bill of the President or the Secretary of Defense in the case of a

closure law to specific activities which occupy

leased facilities. They also adopt the Senate provisions regarding the establishment of a base closure account, delegation of property disposal authority from the Administrator of General Services to the Secretary of Defense, and the streamlining of the environmental impact analysis process associated with closure and realignment actions.

The conferees prescribe a new base closure process because closures and realignments under existing law have two failings. First, closures and realignments take a considerable period of time and involve numerous opportunities for challenges in court. Second, the list of bases for study transmitted by Secretary Cheney on January 29, 1990, raised suspicions about the integrity of the base closure selection process. A new process involving an independent, outside commission will permit base closures to go forward in a prompt and rational manner.

The conferees expect the Department to begin anew in its base selection process, grounded in the programmed force structure and the criteria approved under this process. While bases which appeared on the January 29, 1990 list may reappear on a new proposed list, the conferees expect that the Department will consider all bases in the United States on an equal footing. The conferees further expect that bases on the January 29th list will be properly operated and maintained while this base closure process is implemented.

The test for the Commission to apply to bases recommended by the Secretary for closure and realignment is whether the Secretary deviated substantially from the force structure plan and the final criteria in making the recommendations.

The process established in this bill only covers military installations in the United States. The conferees expect the Secretary of Defense to move aggressively to cease or reduce U.S. operations at bases overseas where U.S. national security interests no longer require the current level of permanently stationed U.S. forces. The credibility of the domestic base closure and realignment process depends in no small measure on the closure of bases overseas.

The conference agreement provides that the Secretary of Defense shall make available to the Commission and to the Comptroller General of the United States all information used by the Department in making its recommendations to the Commission. As it relates to the General Accounting Office (GAO), this provision is intended to permit the staff of GAO to monitor the activities, while they occur, of the Services and the Department of Defense in selecting bases for closure and realignment. Through this monitoring, GAO will be able to report to the Commission and to Congress on how the process was conducted and whether it met the statutory requirements. The conferees do not intend that GAO staff be permitted to attend meetings or interfere, in any way, in the deliberative process. GAO is expected to fulfill its statutory responsibilities under this process through its normal methodology of interviewing officials and analyzing documents.

The base closure process contained in this bill clearly avoids the constitutional pitfall of excessive delegation of legislative authority. First, Congress is not really delegating its authority. Both the content of the criteria by which bases will be selected for closure and

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The conferees note that the new procedures would considerably enhance the ability of the Department of Defense to promptly implement proposals for base closures and realignment. While the conferees are confident that these innovative procedures would create significant advantages for the Executive Branch over current law, the conferees recognize that there might be a need for further changes once the procedure has been implemented. The conferees encourage the Department to promptly advise the Congress of any implementation issues that need to be addressed in subsequent legislation.

In making proceedings, information, and deliberations of the Commission open to designated members of Congress, the conferees understand that should the Members of Congress be unable to attend any part of any closed Commission meeting, the Chairman of the Commission shall insure that full access to meeting proceedings is provided to appropriate staff of such member.

PART B—OTHER PROVISIONS RELATING TO BASE CLOSURES AND REALIGNMENTS

LEGISLATIVE PROVISIONS ADOPTED

Residual value of closing overseas bases (sec. 2921)

The House bill contained a provision (sec. 2832) that would express the sense of Congress that the United States ought to receive consideration equal to the fair market value of improvements made by the United States to military bases overseas which are being vacated. The provision would also require a report from the Secretary of Defense that would advise the Congress of the estimated fair market value of each overseas installation which will be vacated.

The Senate amendment contained a provision (sec. 1245) that would express the sense of Congress regarding the closure of U.S. military installations outside the United States.

The Senate amendment contained a provision (sec. 2811) that would express the sense of the Senate that the Department of Defense should be the lead agency in negotiations with host governments regarding the residual value of vacated overseas military installations; that the residual value be as high as possible; and that under no circumstances should the cost to the United States of environmental cleanup exceed the residual value of a closing overseas installation.

The Senate amendment contained another provision (sec. 2812) that would direct that the residual value from closing overseas military bases accruing to the United States be returned to the Department of Defense. Subject to appropriation, these sums could be used only for real property maintenance or environmental restoration of military facilities within the United States.

The House recedes with an amendment that would consolidate these four provisions into a single section. The section would contain no reference to environmental restoration costs because the conferees believe that the environmental restoration of bases used by the United States in foreign countries is a host nation responsibility.