



DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

1625 K STREET, N.W. SUITE 400

WASHINGTON, D. C. 20006-1604  
202-653-0823

JIM COURTER, CHAIRMAN

COMMISSIONERS:

WILLIAM L. BALL, III  
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ROBERT D. STUART, JR.

September 21, 1992

Mr. William Ball, III  
President  
National Soft Drink Association  
1101 16th Street, N.W.  
Washington, D.C. 20036

Dear Mr. Ball:

It has been some time since we have updated you on pending legal matters regarding the Commission. Last week was a busy one for us on the legal front and I would like to take this opportunity to disseminate the information received by the Commission regarding our three lawsuits.

First, Representative Peter Kostmayer leads a suit filed against the Commission regarding the closure of Warminster Naval Air Development Center. Representative Kostmayer is joined by Senators Specter and Wofford, Representative Larry Coughlin, Service Employees International Union and the American Federation of Government Employees. The suit closely resembles the issues raised in the Philadelphia Naval Shipyard suit (Specter V. Garrett) but adds the new twist of dual jurisdiction of the Commission on the Consolidation and Conversion of Defense Research and Development Labs (CCC) over closures and realignments. As you will recall, the CCC is an advisory panel to the Secretary of Defense which was supposed to give guidance on the difficult issue of lab consolidation. No legal hearing or trial dates have been set. The Justice Department will again represent the Commission.

Also, the Loring Air Force Base lawsuit (Cohen V. Rice) was dismissed from the District Court of Maine on a Summary Judgement. Judge Brody found that under precedent of Franklin V. Massachusetts, only final agency actions are reviewable by the Courts under the Administrative Procedure Act (APA). The recommendations sent from the Commission to the President do not constitute "final agency action" under the APA and Franklin, and therefore are non-reviewable. It is anticipated that this Summary Judgement for the Commission, Department of Defense and Department of the Air Force will be appealed to the Federal District Court of Appeals.

Finally, in the Philadelphia Naval Shipyard lawsuit (Specter

Please refer to this number  
when responding 920922-1

V. Garrett) we are still awaiting a new trial date. As you will recall the Appellate Court remanded the case to the Federal District Court for trial on sharply limited legal questions. The Commission, the Department of Defense and the Department of the Navy have all joined in a request to the Solicitor General for a Writ of Certiorari before the Supreme Court which would allow for an appeal to the District Court of Appeals decision. The Commission should be apprised of the status of our joint request in the very near future. It is not clear whether this case will receive any new action before the November elections, but it can't be ruled out given the closeness of Senator Specter's reelection campaign.

I hope that this update has been helpful. In Bob Moore's absence, I will continue to provide you with updates as developments arise regarding any of the three pending lawsuits.

Sincerely,



MATTHEW P. BEHRMANN  
Director of Staff

MPB/jb  
2 encl.



(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 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

Public  
Information.



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ALEXANDER B. TROWBRIDGE

May 28, 1991

To: Bob Moore  
From: Matt Behrmann *MPB*  
Regarding: Ongoing Legal Questions for the Commission

Bob, as you know this commission is charting untested legal ground with much of its work. We have discussed at great length many of the legal questions before us. I feel it is imperative to establish legal briefs on many of these issues. The following is a list of many of those legal concerns. Please provide detailed written directives for our staff on these issues where relevant, or continue in earnest to answer unresolved legal questions.

1. When is the 1991 commission disbanded? When do our Members Commissions definitively expire?
2. Recommendations of the commission regarding environmental laws (you will recall we discussed this initially at the May 17 hearing).
  - a) allowing partitioning of base properties to resolve issues of partial contamination.
  - b) overall prioritization of clean-up on closure bases.
3. The issue of additional time for Commission deliberations as well as legal ramifications of missed deadlines. (Please put your oral advice to date on paper).
4. Ability of the commission to make decisions binding in rounds '93 and '95.
5. Draft legal language for closure and realignment actions for our final report (concern here is our actions have force of law and must be written accordingly).
6. Draft language that may be used should the commission choose to forego Corp of Engineers or RDT&E closures this round. This language should stake our jurisdiction and highlight voluntary deferment in these areas until rounds '93 or '95.

7. Commission drug policy.
8. Approved personnel handbook.
9. Legal advice regarding: staff luncheons (legality of having lunch for staff paid for by hosting parties).
10. Ability of our commission to make conditional recommendations.
11. Federal Register notice changes in deliberations hearing dates as well as site selections for all deliberation hearings. Specifically now that a site has been secured for the deliberation hearings, must we submit another notice to the Federal Register?
12. Legal memo on what constitutes our official record especially regarding: Regional and D.C. hearings.
13. The Commission has received requests for staff as well as Commissioners to speak before different groups i.e. the Worldwide Meeting of DoD Priority Placement Coordinators. Please advise on the implications of this request, legal and monetary.
14. Legal memo on the consideration of Resolution of Disapproval. Does the Resolution require Presidential approval? Can the President veto the Resolution? Does a veto override proceed in standard fashion?

Thanks for your attention to these issues.

*Thanks  
Matt*

BR  
JF  
Bd

M E M O R A N D U M

TO: COMMISSIONERS  
FROM: ROBERT J. MOORE, GENERAL COUNSEL  
RE: STATUTORY RESPONSIBILITIES, VOTING PROCEDURE  
DATE: JUNE 13, 1991

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- During the "Review and Recommendations" phase of Commission activities there exist at least four actions the Commission should take:

1. Conducting public hearings on closure and realignment recommendations.
2. Review and analyze the recommendations made by the Secretary of Defense.
3. By July 1, provide to the President a report containing:
  - A. The Commission's findings and conclusions based on a review and analysis of the Secretary's recommendations.
  - B. The Commission's recommendations for closures and realignments of military installations.
4. In order to make changes in the Secretary's list, follow the statutory procedure:
  - A. The Commission may make changes in the Secretary's list if the Commission determines that the Secretary deviated substantially from the force structure plan and final criteria.
  - B. If a change is made to the Secretary's list, the Commission shall explain and justify its recommendations in the report to the President.

- Vote required to adopt a recommendation for closure or realignment:

To adopt a Commission recommendation to close or realign a military installation requires a "majority vote of Commissioners serving at that time." That number is presently four, pursuant to Rule 6 of the Procedural Rules of the Defense Base Closure and Realignment Commission.

If the recommendation involves a change from the Secretary's list, then it would be prudent to state the substantial deviations from the force structure plan and the final criteria, and the change should be explained and justified. The statute does not explicitly require that these reasons be explained in the meeting, only that they be included in the report to the President. However, it is recommended that each of these items be stated during the Commission's open deliberations.

Procedures for the deliberations will continue under the Commission Procedural Rules, as amended April 26, 1991. The Chairman has agreed that the deliberations will be subject to Roberts Rules of Order, we have copies available if you would like one.

If you have any questions on these statutory responsibilities or meeting procedures, please do not hesitate to ask.

#### PUBLIC LAW 101-510—NOV. 5, 1990

##### SEC. 2903.

(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.

Public information.

(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.

Reports.

(B) 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.

(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).

DRAFT

17 June 1991

**MEMORANDUM FOR DR. BILL MOORE**

**SUBJECT: Defense Base Closure and Realignment Act of 1990**

Your question centers around the interpretation of section 2905(d)(2)(b) of the Base Closure Act and whether the Commission may change the Secretary list if it determines the Secretary deviated substantially from the force-structure plan and final criteria upon which the list was based. In particular, I believe you questioned whether the Commission has the authority under the law to change the Secretary list if it finds the Secretary deviated substantially from either the force-structure plan or the final criteria, or whether the Commission's authority to change the list could only be exercised if it determined the Secretary failed to comply with both the force-structure plan and the final criteria.

You described a two-part definition of substantial compliance now being used by the Commission, that is, a condition that permits the Commission to change the Secretary's list if it fails to meet either of the above mentioned statutory requirements. It is my opinion that using the two part definition now in practice is legally correct.

Although I can understand that one might interpret the law as requiring that there must be a failure of both the force-structure plan and the final criteria before the Commission may change the Secretary's list, I believe such an interpretation is overly strict and overlooks the intent of Congress.

Even though there is not a published legislative history of the Base Closure Act, nonetheless it is clear that Congress added the requirement for a force-structure plan because of concern with the January 29, 1990 list of bases proposed for closing. Congress was concerned with the list because apparently it proved to contain bases with combat units critical to the Gulf War. In particular Ft. McClullan was targeted - a base critical to training troops to deal with the chemical battlefield.

At any rate, Congress imposed the force-structure requirement in the Base Closure Act, something that was missing and thought to be a deficiency in 1988 Base Closure Commission's Authority.

It is clear from analyzing the entire Base Closure Act that Congress views the force-structure plan and the final criteria as separate and distinct requirements. The simple unartful use of the conjunction "and" should not therefore, be dispositive of this issue in view of the obvious intent of Congress.

The two requirements are treated separately in that the force-structure plan is a requirement in the budget justification for DoD's fiscal year 1992, 1994, and 1996 budget, while the final criteria is separately published in the Federal register (and

transmitted to the Congressional defense submitters) not later than 15 Feb of the year concerned. Congressman Les Aspin is on record: "Together, these two elements, the force structure plan and the criteria for closing, would form the rational center of the base closing process."

In conclusion, I believe your approach to use the two-part definition process as you described, is reasonable and correct. To interpret otherwise would defeat the purpose of the law.

John A. Ciucci

cld

6-19

- either criteria can be derived -

- both criteria should be met -  
be hand signed

- I pointed out the big holes

As: I can't guarantee to my client that this is at a  
valid of a if we use the more liberal test. He agreed and said  
the commission will have to decide

~~But~~  
~~to~~

DRAFT

CONFIDENTIAL MATTERS  
ATTORNEY CLIENT PRIVILEGE

MEMORANDUM TO: Paul Hirsch, Director of Review and Analysis  
FROM: Robert Moore, General Counsel

You have asked for guidance on what conditions must occur prior to the Commission making a change in the Secretary of Defense's list of closure and realignments.

The test that must be applied exists at PL 101-510 section 2903 (d)(2)(B). "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."

In interpreting this provision of the statute, the language is ambiguous as to whether the Commission must find a substantial deviation from both "the force structure plan and the final criteria", or whether the Commission must find a substantial deviation from a finite set which includes "the force structure plan and the final criteria."

The legislative history at page 705 of the PL 101-510 Conference Report does nothing to clear up the ambiguity, it states:

"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 when making the recommendations."

✓ The interpretation, which the Research and Analysis section proposes, provides that the Commission may change the Secretary's list if there exists a substantial deviation in the force structure plan or in the final criteria. This is a reasonable interpretation, but its use will not be without risk of legal challenge.

✓ If our commission had the authority to issue a declaratory order, issue an adjudicative decision, or expressed authority to issue binding interpretations, then this interpretation would be controlling, Chevron USA Inc. v. NDRC 467 U.S. 837. Without such authority we can adopt the "or" interpretation by Commission vote, but will not be assured definitive acceptance by the courts.

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This interpretation, less restrictive than finding a substantial deviation in both the force structure plan and the final criteria, will however be afforded deference by the courts. Although the likelihood is slight, there is no guarantee that a contrary interpretation would not prevail, Sierra Club v. Clark 756 F.2d 686.

The sustaining of the Commission recommendations under judicial scrutiny is all of our concern. In order to lower the risk of challenge to our Commissioners actions, I recommend the following:

1. At the beginning of deliberations on the Secretary's list, the commission should adopt Research and Analysis's standard of review. This would allow for the finding of a substantial deviation from the set (force structure plan and the final criteria). This standard, which was presented to the commission on April 26, was never adopted.
2. If a change is made to the Secretary's recommendations, the Commissioners should state the substantial deviations from both the force structure plan and the final criteria. Obviously the more findings of substantial deviation in both categories the better.
3. The office of the General Counsel will aggressively defend the Commission against challenges should they arise.

cc: Mr. Chairman  
Matt Behrmann

Attorney-Client Communications

M E M O R A N D U M

To: Sheila  
Fr: MAH  
DT: June 4  
RE: MOTIONS: INITIAL CONCERNS

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The base grouping worksheet has not been returned by any service yet. We are providing another deadline of next Tuesday.

It is my belief that some bases- esp. the ones where there are groupings of smaller installations, DISAs, DLAs can be grouped into one motion. The Commissioners have the option of dividing the motions. We will have to be careful of those bases that are followers when/if we put them in a complex motion containing a group of bases.

It is also my opinion that we do not have to vote "not to add a base" or "not to consider a base" or "not to have any language in the report" like they did last year. See attachment.

The only votes required are:

---- adopt the secdef's rec.

---- finding sub deviation and therefore vote xx as a proposed change to the SecDef's list.

I have a real concern that some recs are going to be very detailed- we must be alerted to those ahead of time by research.

Last commission ran into problems with the detail of the recs. We will need to be aware.

For groupings, generally I think we should do the larger bases first. The followers immediately following that debate - unless the follower can stand on its own for closure reasons- then we may want to postpone for the category discussion.

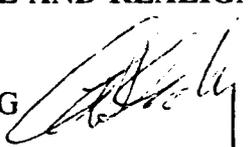
I'll have more thoughts when I see the R/A's lists.

**KUTAK ROCK**  
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April 12, 1995

**MEMORANDUM FOR MS. MADELYN R. CREEDON, GENERAL COUNSEL,  
DEFENSE BASE CLOSURE AND REALIGNMENT  
COMMISSION  
MR. S. ALEXANDER YELLIN, NAVY TEAM LEADER,  
DEFENSE BASE CLOSURE AND REALIGNMENT  
COMMISSION**

**FROM: GEORGE R. SCHLOSSBERG** 

**SUBJECT: LEGAL AUTHORITY OF DEFENSE BASE CLOSURE AND  
REALIGNMENT COMMISSION TO CONSIDER PRIVATE  
SECTOR SHIPYARD CAPACITY**

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The Defense Base Closure and Realignment Act of 1990, as amended (the "Act"), as implemented and interpreted previously by the Secretary of Defense ("Secretary") and the Defense Base Closure and Realignment Commission ("Commission") in 1991 and 1993, provides this Commission with the authority, if not the duty, to consider, among other things, private sector shipyard capacity in its review of the Department of Defense's 1995 Base Closure Recommendations. Moreover, during the deliberations leading to the 1995 round of base closure recommendations, the Military Departments, the Joint Working Groups, and the Department of Defense used private sector capacity in fashioning their final recommendations to the Commission.

**A. Statutory construction of the Act favors consideration of private capacity by the Commission in its closure and realignment recommendations.**

To accomplish its statutory goals, the Act established a specific procedure for making recommendations for base closures and realignments. The Secretary is given the responsibility to develop a force structure plan and final criteria to be used in making closure recommendations, and the Commission is given the responsibility to review and make changes to the Secretary's closure recommendations if it determines that the Secretary "deviated substantially" from the force structure plan and final criteria.

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Memorandum for Ms. Madelyn R. Creedon and Mr. S. Alexander Yellin

April 13, 1995

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Significantly, however, the statute does not delineate either the final criteria themselves, or the factors that are to be encompassed within the final criteria. Rather, the statute is silent as to any of the details of the final criteria. Similarly, the legislative history of the Act reveals that Congress made no attempt to define the final criteria with any greater precision.

Given the complexity of the issues underlying base closures and the specialized nature of the Military Departments, this lack of specific statutory detail is hardly surprising. To the contrary, by declining to set forth the final criteria or the issues to be considered thereunder, Congress followed the frequently employed practice of deliberately casting statutory language in broad terms, and then entrusting an administrative agency with great experience in the field to "fill in the gaps" in the legislation by regulation and then to apply such regulations in a manner consistent with the legislative intent. See, e.g., E.I. duPont de Nemours & Co. v. Collins, 432 U.S. 46 (1977). Ultimately, the authority is given to the Commission to send to the President a final list of recommendations according to their own analysis of the issues and selection criteria.

Under similar broadly written statutory schemes, situations frequently arose where a specific issue in controversy was not addressed directly by the Congress, either in the language of the statute itself or in the legislative history. Under general principles of statutory construction and administrative law, when Congress has not spoken to the precise question at issue, the agency's interpretation of the statute is then consulted. If the agency's interpretation is consistent with the statute's intent and is rationally supported, the agency's interpretation generally is given great deference and is usually deemed to be controlling. See, e.g., Chevron, USA, Inc. v. National Resources Defense Council, 467 U.S. 837 (1984); Sullivan v. Everhart, 494 U.S. 83 (1990); Illinois E.P.A. v. U.S. E.P.A., 947 F.2d 283 (7th Cir. 1991); Difford v. of Health and Human Services, 910 F.2d 1316 (6th Cir. 1990).

These principles are appropriately applied to the issue of the consideration of private capacity in base closure recommendations. The Act is broadly written, is silent on the issue of private capacity as well as on any other factor that is to be considered under the final criteria, and the Secretary is the "expert agency" charged with "filling in the gaps."

An inquiry as to whether private capacity must be considered by the Commission in making its base closure recommendations therefore must now turn to the final selection criteria themselves as adopted by the Secretary. Significantly, however, the Secretary also deliberately left the final criteria somewhat broad and general in nature. The final selection criteria to be used by the Department of Defense to make recommendations to be reviewed by the 1995

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Commission are unchanged from the original selection criteria adopted for the 1991 Commission and used also in their entirety by the 1993 Commission. See 59 Fed. Reg. 63769 (1994). For the original criteria, as adopted for the 1995 round of closures, the Secretary of Defense stated that,

The inherent mission diversity of the Military Departments and Defense Agencies makes it impossible for DoD to specify detailed criteria, or objective measures or factors that could be applied to all bases within a Military Department or Defense Agency. See 56 FR 6374 (1991), appended hereto at **Tab A**.

In its adoption of the final criteria in 1991, its published 1991 policy guidance addressing those criteria, and its reaffirmation of those criteria in their entirety in 1993 and 1995, the Secretary established the "regulations" pursuant to which closure recommendations are to be made. Therefore, with respect to any particular issue not specifically addressed in the statute, such as whether private capacity must be considered under the final criteria, general principles of statutory construction as set forth in the Chevron line of cases require that the Secretary's interpretations are to apply, as long as they are consistent with the intent of the statute.

Therefore, that the express language of the final selection criteria does not explicitly mention private capacity is of little importance, because clearly the intent of the Secretary in adopting the final criteria was not to specify each and every factor that is to be considered under those criteria. To the contrary, such specificity was deliberately avoided.

However, in response to concerns voiced by commenting parties on the need for more detailed information as to how the criteria were to be applied, the Secretary published in the Federal Register a "policy guidance" that had been issued to the Military Departments and Defense Agencies on the base closure process. Id. at 6375. In that policy guidance, the Secretary explicitly specifies, in response to comments recommending that the capacity of the private sector to support or perform military missions be considered, that such availability is "already included" in Final Criteria Number One and Four. Id. at 6376.

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Because the Secretary, acting as the expert agency in filling in the gaps of a general statute, has specified in a formal policy notice that consideration of private capacity is included in the final selection criteria,<sup>1</sup> the Commission is charged clearly with the duty to review private sector shipyard capacity during its deliberations.

However, even in the absence of this express policy guidance, private capacity still must be considered logically by the Secretary and the Commission under Criteria Number 1, in order for the agency's application of the guidelines to be consistent with the overall policies and objectives of the Act. The second clause of Criteria No. 1 ("the impact on operational readiness of the Department of Defense's total force"), by its terms, requires that the Secretary consider available private capacity when assessing the impact of a base closure on the readiness of the force, or else the goals of saving money, achieving an efficient military force, eliminating unnecessary facilities, and streamlining the defense infrastructure will not be able to be achievable.

In other words, in order for the closure process to be able to further the efficiency of the military, save money, and still meet the needs of the force, adequate private repair and maintenance facilities available in a particular area--for example, the West Coast or Southern California--must be considered. To the extent that adequate private repair and maintenance facilities are available in a particular area that can satisfy the military's need for operational readiness, the closing of a public facility in that area can be recommended for closure under this criteria. In fact, closing a public facility under such circumstances would further the legislative intent of the statute, in that military funds could instead be used more efficiently on operational activities and keeping open public repair and maintenance facilities in those areas where adequate private capacity is not already present; Criteria number 1 can therefore be satisfied through a combination of public and private facilities.

Thus, the consideration of the availability of private facilities by the Commission in the final criteria is proper, therefore making it appropriate for the Commission to consider the private capacity issue at this time. Most importantly, in a recent Supreme Court review of the Act, the Court concluded that the past actions of the Secretary and the Commission were both

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<sup>1</sup> As stated above, the 1991 final criteria were adopted unchanged by the Secretary for use as the final selection criteria in the 1993 and 1995 closure process. See 57 Fed. Reg. 59335 (1992).

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legitimate and proper. Dalton v. Specter 114 S. Ct. 1719 (1994), 128 L.Ed. 2d 497 (1994). Accordingly, the Commission should continue to act as it has in previous rounds and review private sector capacity during its deliberations.

**B. Private capacity must be considered if the goals and policy objectives of the Act are to be achieved.**

The overall purposes and objectives of the Act must be a primary consideration underlying base closure recommendations. It is a general principle of statutory construction that in interpreting statutory language, the aims, principles, and policies that underlie the statute are to provide guidance. See, e.g., Crandon v. United States, 494 U.S. 152 (1990), citing Kmart Corp. v. Cartier Inc., 486 U.S. 281(1988), and Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 51(1987); Aulston v. U.S., 915 F.2d 584 (10th Cir. 1990), cert. denied, 111 S.Ct. 2011(1991). With respect to the Act, its clear language and legislative history identify the purposes and goals to be achieved through the base closure process.

The purpose of the Act, as set forth in § 2901 (b), is to "provide a fair process that will result in the timely closure and realignment of military installations inside the United States." Another purpose of the Act is to save money. The legislative history of the Act provides useful background as to the purpose of the closure and realignment procedures.

The overall goal of the base closure process was succinctly stated by Congresswoman Schroeder during the floor debate on the base closure proposals of the House Armed Services Committee, as follows:

*[w]e need to close bases to save money. We need to close bases as the size of the force comes down. We need to close bases because the current base structure is inefficient." 126 Cong. Rec. 7462 (daily ed. September 12, 1990).<sup>2</sup>*

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<sup>2</sup> Congresswoman Schroeder was one of the co-authors of the House Armed Services Committee's base closure proposals. Her debate in support of the Committee's proposal repeatedly emphasized that "the Committee proposal guarantees that bases will be closed and the taxpayers will save money." 126 Cong. Rec. 7463 (daily ed. September 12, 1990). The report of this Committee similarly "recognizes the need to close bases" because "[t]he size of the American military will likely decline by 25 percent over the next few years. Fewer troops means fewer bases will be required." H.R. Rep. No. 665, 101st Cong., 2nd Sess. 383. The Committee Report also stresses that the process for the

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An examination of the legislative history of the 1988 Defense Authorization Amendments and Base Closure and Realignment Act, as amended, P.L. 100-526, 102 Stat. 2623, the predecessor to the 1990 Act and which originated a base closure procedure similar in purpose and effect to that adopted in the 1990 Act, also is instructive.<sup>3</sup> For example, the House Armed Services Committee Report on H.R. 4481, on which much of the text of the bill that eventually was passed by Congress in 1988 was based, states that one of the issues that would have to be considered before a base could be closed or realigned is the extent and timing of potential cost savings. H.R. Rep. No. 735(I), 100th Cong., 2nd Sess. 1, 8,11,13. In this regard, the report quotes from testimony by the Secretary before the committee that stated that "savings from closing a base are significant and perpetual." *Id.* at 8. Similarly, the committee report of the Government Operations Committee on the same bill expressed its support of the "goal of effecting savings by expediting the closure of unneeded military facilities." H.R. Rep. No. 735(II), 100th Cong., 2nd Sess. 10.

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closure of military installations must be based on "economy and utility" pursuant to objective criteria designed to achieve, "effectively and efficiently," the military plans of the department as reflected in a force structure plan. *Id.* at 383, 61990 U.S. Code Cong. & Ad. News 3076. The Senate Armed Services Committee also recognized that reductions in military personnel and the need for deficit reduction would trigger a significant number of base closures. S. Rep. No. 384, 101st Cong., 2nd Sess. 295.

<sup>3</sup> This statute created a base closure process which, like the procedure adopted in the 1990 statute, established a Commission on Base Realignment and Closure. The 1988 Commission's statutory task was to transmit a report to the Secretary and the Armed Services Committees of the Senate and the House of Representatives recommending military installations for closure or realignment; expedited procedures for approval or disapproval of the Commission's recommendations by the President and Congress were also established, and closures or realignments approved pursuant to the expedited procedures would be implemented by the Secretary according to a timetable. Defense Base Authorization Amendments and Base Closure and Realignment Act, Pub. L. No. 100-526, Title II --Closure and Realignment of Military installations (codified at 10 U.S.C. 2687 note).

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That the overall goals of the base closure statutes are to effect cost savings in an efficient and expeditious manner in order to implement defense budgetary cuts is echoed in this Commission's 1991 and 1993 Reports to the President. In its 1993 Recommendations, the Commission notes in its opening letter to the President that continuing budget constraints, along with changing national security requirements compel the United States to reduce and realign its military forces. See 1993 Defense Base Closure and Realignment Commission Report to the President at vi. In its introductory sections in the 1991 Report, the Commission states that because of DoD's plans to decrease the military by 25%, there is a need to eliminate unnecessary facilities so that the more limited military dollars may go to vital military needs. See 1991 Defense Base Closure and Realignment Commission Report to the President at vi.

The government cannot accomplish the goal of saving money if the Secretary makes base closure recommendations on the premise that Navy shipyards will perform virtually all of the Navy's ship repair and overhaul requirements, thereby ignoring the reality that private shipyards perform approximately 35 percent of those requirements. In fact, the Congress has acknowledged the important role the private sector plays in providing support to the Services as well as the need to maintain a commercial industrial mobilization base by providing that up to 40 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload may be used to contract for that performance with the private sector. 10 U.S.C. § 2466.

Thus, the goal of achieving cost savings must include consideration of private sector capacity and capabilities. As set forth in the Government Accounting Office's March 1988 Report on Navy Maintenance, the Navy policy set forth in DoD Directive No. 4151.1 (originally adopted in 1974 and repealed in the wake of the enactment of section 2466 of title 10, United States Code), is in accord with Congress' intent to permit 40 percent of all Navy ship repair, overhaul and alteration work to go to private shipyards. GAO/NSIAD-88-109, dated March 25, 1988, Navy Maintenance, Competing Vessel Overhauls and Repairs Between Public and Private Shipyards at 18. For many years, Department of Defense Appropriation Acts directed a specified dollar amount be applied to private sector contractors that roughly equated to the then 70/30 split. Id. Because that congressional intent was well established at the time of enactment of the 1990 Base Closure Act and its predecessor 1988 Act, those Acts by necessity contemplated that the capacity of the private sector must be included for the purpose of achieving cost savings in determining which military bases to close.

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- C. Prior private capacity consideration by the Commission is appropriate and proper and this practice should be continued by the Commission in their 1995 recommendations for closure and realignment.**

That the availability of private capacity is an appropriate and necessary factor to be considered in an evaluation of base closure recommendations under the final criteria is highlighted by the fact that private capacity was considered by this Commission in making its 1991 and 1993 closure and realignment recommendations.

In 1993 the Base Closure Commission wrote in its final recommendation to the President to close Mare Island Naval Shipyard, California:

*When relocating a function from a closing shipyard, the Navy should determine the availability of the required capability from another DoD entity or the private sector prior to the expenditure of resources to recreate the capability at another shipyard.*

See 1993 Defense Base Closure and Realignment Commission Report to the President at 1-16.

Similarly, a significant factor in the 1991 recommendations by the Commission concerning the Philadelphia Naval Shipyard was the availability of suitable private shipyard alternatives on the East Coast. For example, in evaluating options for Philadelphia, the Commission concluded that although the need for contingency capability for carrier drydocking on the East coast existed, that need could be met sufficiently through a combination of mothballing at Philadelphia and the use of the Norfolk Naval Shipyard (a public facility), and the Newport News Shipbuilding and Dry Dock Company (a private facility.)

Moreover, the use of private capacity is further underscored by the deliberations of the Military Departments and the Joint Working Groups that led to the 1995 DoD recommendations to the Commission. For example, during the March 7, 1995 Commission hearing, Secretary of the Army Togo West testified that "civilian capacity was a player" in the Army's analysis of its hospital medical capacity and its determination as to which facilities to close and realign. Secretary West stated:

*It was one of the ways in which we were able to decide that we could dispense with a center here or downgrade a hospital to a clinic there.*

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*And so, at least at the level at which I reviewed it, excess civilian capacity did not influence me so much as the certainty that with civilian capacity, we could be sure that that where we were making an adjustment there were still going to be proper medical care and treatment for those who depend on the Army. [sic] [March 7, 1995 Transcript pp. 90-91]*

The Army also considered private capacity in the area of military ports in the United States. Secretary West testified further before the Commission that with regard to the Army's 1995 recommendation to close Military Ocean Terminal Bayonne, New Jersey:

*...we in the Army are fairly comfortable with using commercial ports in most cases. There are greater assurances of commercial port availability on the East Coast than the West. So just as a matter of prudent planning, we elected to keep Oakland open, while we felt very comfortable that we could close Bayonne and realize the savings from that action. [See March 7, 1995 Transcript pp. 101-102]*

In addition, all three Military Departments considered the availability of housing in the private sector in their 1995 evaluations of their military installations. Specifically, the Department of the Navy, in its Community Infrastructure Impact Analysis, included information on the ability of existing infrastructure in the local community, to absorb additional Navy personnel and missions. Installations were asked to assess the impact of increases in base personnel on off-base housing availability, public and private school, health care facilities and other off-base private recreational activities. See page 33 of the Department of the Navy Analyses and Recommendations (Volume IV), March 1995. The Air Force, in its installation evaluation criteria considered off-base housing affordability and its suitability in its evaluation of community infrastructure, as well as, off-base recreational and hospital facilities. See page 69 of the Department of the Air Force Analyses and Recommendations (Volume V), February 1995. Similarly, the Department of the Army used off-base housing for soldiers and families in its overall evaluation of Land Facilities as provided for by the DoD. See page 24 of the Department of the Army Analyses and Recommendation (Volume II).

Private capacity was also evaluated and considered by the Joint Cross Service Groups. In particular, during the March 7, 1995 Commission hearing on recommendations by the Army, Brigadier General Shane of the Department of the Army testified that excess civilian capacity was considered in the hospital Joint Cross Service process. In response to Commissioner

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Steele's question with regard to the Army's recommended closure of Fitzsimmons Army Medical Center and the continued ability of the Services to meet the military need in the area, the General responded:

*...it goes back to the question that Commissioner Robles asked in regards to excess capacity -- civilian capacity that exists. It is my understanding that the Joint Cross Servicing Group looked at that real hard and supported this recommendation from the Army, and determined that there was capacity and that there would not be a major problem with the diversion of that tri-care service throughout the area.*

[March 7, 1995 Transcript pp. 95-96]

That the Commission relied upon the availability of private capacity in making closure and realignment recommendations in 1993 and 1991, and that the Military Departments and the Joint Cross Service Working Groups evaluated the capacity of the private sector when making their 1995 recommendations, is clearly dispositive as to whether private capacity may be considered by the Commission at this time as well.

**D. Conclusion**

One of the primary purposes of the Act is to avoid wasting money on public facilities that are excess to meeting the military's requirements. That purpose can be accomplished only if the Secretary and the Commission base their Navy shipyard closure recommendations on the Nation's entire ship repair and maintenance capability. Accordingly, we believe it is appropriate and proper for the Commission to consider private sector shipyard capacity when deciding which shipyards to recommend for closure or realignment.

Enclosure: as stated.

cc. w/ enclosure: Mr. Larry Jackson

Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.8.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Commissary Shelf Stocking & Custodial, Fitzsimmons Army Medical Center, Denver, Colorado.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 91-3704 Filed 2-14-91; 8:45 am]

BILLING CODE 6470-33-M

#### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** March 18, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.8. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped. It is proposed to add the following

commodities and services to the Procurement List:

#### Commodities

##### Case, Ear Plug

6515-01-212-9452.

(Remaining 20 percent of Government's Requirement)

##### Wash Kit, Personal

7360-00-139-1063

##### Bag, Parts

8105-LL-800-0208

8105-LL-800-0209

8105-LL-800-0210

8105-LL-800-9974

8105-LL-800-9975

(Requirements of Mare Island Naval Shipyard, CA)

#### Services

Janitorial/Custodial, Department of the Army, Coralville Reservoir, Coralville Lake, Iowa.

Janitorial/Custodial, Internal Revenue Service Center, 3651 South Interregional Highway 35, Austin, Texas

Sending and Oiling Picnic Tables, Deschutes National Forest, Bend Ranger District, Bend, Oregon.

E.R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 91-3705 Filed 2-14-91; 8:45 am]

BILLING CODE 6470-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

Department of Defense Selection Criteria for Closing and Realigning Military Installations Inside the United States

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final selection criteria.

**SUMMARY:** The Secretary of Defense, in accordance with section 2903(b), title XXXIX, part A of the FY 1991 National Defense Authorization Act, is required to publish the proposed selection criteria to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States.

**EFFECTIVE DATE:** February 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Whittaker or Ms. Patricia Walker, Base Closure and Utilization, OASD(P&L), (703) 614-5356.

**SUPPLEMENTARY INFORMATION:**

#### A. Final Selection Criteria

The final criteria to be used by the Department of Defense to make recommendations for the closure or realignment of military installations inside the United States under title

XXXIX, part A of the National Defense Authorization Act for Fiscal Year 1991 as follows:

In selecting military installations for closure or realignment, the Department of Defense, giving priority consideration to military value (the first four criteria below), will consider:

#### Military Value

1. The current and future mission requirements and the impact on operational readiness of the Department of Defense's total force.

2. The availability and condition of land, facilities and associated airspace at both the existing and potential receiving locations.

3. The ability to accommodate contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

4. The cost and manpower implications.

#### Return on Investment

5. 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.

#### Impacts

6. The economic impact on communities.

7. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions and personnel.

8. The environmental impact.

#### B. Analysis of Public Comments

The Department of Defense (DoD) received 169 public comments in response to the proposed DoD selection criteria for closing and realigning military installations inside the United States. The public's comments can be grouped into four topics: General, military value, costs and "payback", and impacts. The following is an analysis of these comments.

##### (1) General Comments

(a) A substantial number of commentors expressed concern over the proposed criteria's broad nature and similarity to the 1988 Defense Secretary's Base Realignment and Closure Commission criteria. Many of the comments noted a need for objective measures or factors for the criteria. Some commentors also suggested various standard measures or factors for

the criteria. The inherent mission diversity of the Military Departments and Defense Agencies (DoD Components) makes it impossible for DoD to specify detailed criteria, or objective measures or factors that could be applied to all bases within a Military Department or Defense Agency. We have provided the commentors' letters to each Military Department for their consideration. The similarity to the 1988 Base Closure Commission criteria is acknowledged. After reviewing the public comments we concluded that using similar criteria is appropriate.

(b) Many commentors noted that a correlation between force structure and the criteria was not present. The base closure and realignment procedures mandated by title XXIX, part A, of the National Defense Authorization Act for Fiscal Year 1991 (the Act) require that the Secretary of Defense's recommendations for closure and realignment be founded on the force structure plan and the final criteria required by the Act. DoD's analytical and decision processes for applying the final criteria will be based on the force structure plan. The military value criteria provide the connection to the force structure plan.

(c) Many commentors noted the need for more detailed information on how DoD would implement the base closure procedures required by the Act. A recurrent suggestion was to group like bases into categories for analysis. In response to this comment and suggestion, and to respond to the general comments (a) and (b) above, we have issued policy guidance to the Military Departments and Defense Agencies on the base closure process. This guidance requires them to:

- Treat all bases equally: They must consider all bases equally in selecting bases for closure or realignment under the Act, without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department. This policy does not apply to closures or realignments that fall below the thresholds established by the Act or to the 86 bases closed under Public Law 100-526:

- Categorize bases: They must categorize bases with like missions, capabilities and/or attributes for analysis and review, to ensure that like bases are fairly compared with each other, and

- Perform a capacity analysis: They must link force structure changes described in the force structure plan with the existing force and bases structure, to determine if a potential for closure or realignment exists. In the

event a determination is made that no excess capacity exists in a category, then there will be no need to continue the analysis of that category, unless there is a military value or other reason to continue the analysis:

- Develop and Use Objective Measures/Factors: They must develop and use objective measures or factors within categories for each criterion, whenever feasible. We recognize that it will not always be possible to develop appropriate objective measures or factors, and that measures/factors (whether they be objective or subjective) may vary for different categories of bases.

(d) A number of commentors recommended assigning specific weights to individual criteria. It would be impossible for DoD to specify weights for each criterion that could be applied across the board to all bases, again due to the mission diversity of the Military Departments and Defense Agencies. It appears from the comments that numbering the criteria may have been mistaken as an order of precedence associated with individual criteria. We do not intend to assign an order of precedence to an individual criterion, other than to give priority to the first four.

(e) Several commentors gave various reasons why a particular installation should be eliminated from any closure or realignment evaluation. Public Law 101-510 directs DoD to evaluate all installations equally, exclusive of those covered under Public Law 100-526 or those falling below the threshold of section 2687, title 10, U.S. Code. Public Law 100-526 implemented the recommendations of the 1988 Defense Secretary's Commission on Base Realignment and Closure. We have issued guidance to the DoD Components instructing them to consider all bases equally, this includes those previously nominated for study in the Defense Secretary's January 29, 1990, base realignment and closure announcement that are above the thresholds established in the Act. Conversely, we did not receive any requests that a particular installation be closed or realigned pursuant to section 2924 of Public Law 101-510.

(f) A number of commentors noted a need for more management controls over data collection to ensure accuracy of data. We agree with this recommendation and have issued guidance that requires the DoD Components to develop and implement internal controls, consistent with their organizational and program structure, to ensure the accuracy of data collection and analyses being performed. This

guidance incorporates the lessons learned from the General Accounting Office's review of the 1988 Base Closure Commission's work.

(g) After detailed consideration of all comments, we have determined that some of the criteria may have been unclear. We have revised the criteria for additional clarity.

(h) Some of the early comments we received recommended extending the original December 31, 1990, public comment deadline. We agreed and extended the public comment period to January 24, 1991. In addition, we accepted for consideration 19 public comments received after the January 24, 1991, deadline.

## (2) Military Value Comments

(a) A majority of comments received supported DoD's decision to give priority consideration to the military value criteria. In the aggregate, military value refers to the collection of attributes that describe how well a base supports its assigned force structure and missions.

(b) Several commentors recommended that National Guard and Reserve Component forces be included as part of DoD's base closure analysis. The Department's total force concept includes National Guard and Reserve Component forces, and these forces will be reflected in the force structure plan required by the Act for this base closure process. To clarify that point, criteria number one and three were amended.

(c) Some commentors recommended DoD apply the military value criteria without regard to the DoD component currently operating or receiving the services of the base. The commentors noted that this would maximize utilization of Defense assets and therefore improve the national security. We agree with this comment. DoD must retain its best bases and where there is a potential to consolidate, share or exchange assets, that potential will be pursued. We also recognize that this potential does not exist among all categories of bases and that the initial determination of the military value of bases must be made by the DoD Component currently operating the base. Consequently, we have left the military value criteria general in nature and therefore applicable DoD-wide, where appropriate. We have also issued guidance to the DoD Components that encourages inter-service and multi-service asset sharing and exchange. Finally, we will institute procedures to ensure each DoD Component has the opportunity to improve the military value of its base structure through

analysis of potential exchanges of bases with other DoD Components.

(d) Some commentors recommended we include the availability of airspace in our considerations of military value. We agree and have revised criterion number two accordingly.

(e) Several commentors requested a geographic balance be maintained when considering installations for realignment or closure. DoD is required by Public Law 101-510 to evaluate all installations equally, exclusive of those covered under Public Law 100-526 or those falling below the thresholds of section 2687, title 10, U.S. Code. However, some measures of military value do have a geographic component and therefore military mission requirements can drive geographic location considerations.

(f) Some commentors recommended that the availability of trained civil service employees be considered as well as the capacity of the private sector to support or perform military missions. DoD's civil service employees are an integral part of successful accomplishment of defense missions, as are defense contractors whether they be nationally or locally based. To the extent that the availability of trained civilian or contractor work forces influences our ability to accomplish the mission, it is already included in criteria number one and four.

(g) Several commentors recommended that mobilization potential of bases be considered and that those bases required for mobilization be retained. Contingency and mobilization requirements are an important military value consideration and were already included in criterion number three. The potential to accommodate contingency and mobilization requirements is a factor at both existing and potential receiving locations, and we have amended criterion number three accordingly.

(h) One commentor recommended retaining all bases supporting operation Desert Shield/Storm and another recommended including overseas bases. DoD must balance its future base structure with the forces described in the force structure plan, and not on the current basing situation. Some forces currently supporting Operation Desert Storm are scheduled for drawdown between 1991 and 1997. DoD must adjust its base structure accordingly. Overseas bases will also be closed in the future as we drawdown DoD's overseas forces. However, Congress specifically left overseas base closures out of the base closure procedures established by the Act.

### (3) Cost and "Payback" Comments

(a) Some commentors recommended calculating total federal government costs in DoD's cost and "payback" calculations. A number of such comments gave as examples of federal government costs, health care and unemployment costs. The DoD Components annually budget for health care and unemployment costs. We have instructed the DoD Components to include DoD costs for health care and unemployment, associated with closures or realignments, in the cost calculations.

(b) Several commentors noted the absence of a "payback" period and some felt that perhaps eight or ten years should be specified. We decided not to do this; we did not want to rule out making changes that were beneficial to the national security that would have longer returns on investment. The 1988 Base Closure Commission felt that a six-year "payback" unnecessarily constrained their choices. The DoD Components have been directed to calculate return on investment for each closure or realignment recommendation, to consider it in their deliberations, and to report it in their justifications. Criterion number five has been amended accordingly.

(c) Some commentors recommended including environmental clean-up costs in base closure cost and payback calculations. Some also noted that the cost of environmental clean-up at a particular base could be so great that the Department should remove the base from further closure consideration.

The DoD is required by law to address two distinctly different types of environmental costs.

The first cost involves the clean-up and disposal of environmental hazards in order to correct past practices and return the site to a safe condition. This is commonly referred to as environmental restoration. DoD has a legal obligation under the Defense Environmental Restoration Program and the Comprehensive Environmental Response, Compensation and Liability Act for environmental restoration at sites, regardless of a decision to close a base. Therefore, these costs will not be considered in DoD's cost calculations. Where installations have unique contamination problems requiring environmental restoration, these will be identified as a potential limitation on near-term community reuse of the installation.

The second cost involves ensuring existing practices are in compliance with the Clean Air, Clean Water, Resource Conservation and Recovery Act, and other environmental acts, in

order to control current and future pollution. This is commonly referred to as environmental compliance. Environmental compliance costs can potentially be avoided by ceasing the existing practice through the closure or realignment of a base. On the other hand, environmental compliance costs may be a factor in determining appropriate closure, realignment, or receiving location options. In either case, the environmental compliance costs or cost avoidances may be a factor considered in the cost and return on investment calculations. The Department has issued guidance to the DoD Components on this issue.

(d) Some commentors recommended DoD change the cost and "payback" criteria to include uniform guidelines for calculating costs and savings. We agree that costs and savings must be calculated uniformly. We have improved the Cost of Base Realignment Actions (COBRA) model used by the 1988 Base Closure Commission and have provided it to the DoD Components for calculations of costs, savings, and return on investment.

### (4) Impacts Comments

(a) Many commentors were concerned about social and economic impacts on communities and how they would be factored into the decision process. We have issued instructions to the DoD Components to calculate economic impact by measuring the effects on direct and indirect employment for each recommended closure or realignment. These effects will be determined by using statistical information obtained from the Departments of Labor and Commerce. This is consistent with the methodology used by the 1988 Base Closure Commission to measure economic impact. We incorporated the General Accounting Office's suggested improvements for calculation of economic impact. DoD will also determine the direct and indirect employment impacts on receiving bases. We have amended criterion number six to reflect this decision.

(b) The meaning of criterion number seven, "the community support at the receiving locations" was not clear to several commentors. Some wondered if that meant popular support. Others recognized that this criterion referred to a community's infrastructure such as roads, water and sewer treatment plants, schools and the like. To clarify this criterion, we have completely re-written it, while also recognizing that a comparison must be made for both the existing and potential receiving communities.

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## Department of the Army

### Environmental Assessment; Exoatmospheric Discrimination Experiment (EDX) Program

**AGENCY:** U.S. Army Strategic Defense Command (USASDC); DOD.  
**COOPERATING AGENCY:** Strategy Defense Initiative Organization, DOD U.S. Department of the Navy, DOD.  
**ACTION:** Notice of Availability of finding of no significant impact.

**SUMMARY:** Pursuant to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR parts 1500-1508), Army Regulation 200-2, Chief of Naval Operations Instruction 5090.1, and the Department of Defense (DOD) Directive 6050.1 on Environmental Effects in the United States of DOD actions, the USASDC has conducted an assessment of the potential environmental consequences of conducting EDX program activities for the Strategic Defense Initiative Organization. The Environmental Assessment considered all potential impacts of the proposed action alone and in conjunction with ongoing activities. The finding of no significant impact summarizes the results of the evaluations of EDX activities at the proposed installations. The discussion focuses on those locations where there was a potential for significant impacts and mitigation measures that would reduce the potential impact to a level of no significance. Alternatives to the EDX launch facility were examined early in the siting process but were eliminated as unreasonable. A no-action alternative was also considered. The Environmental Assessment resulted in a finding of no significant impact. Construction will proceed as scheduled, however, due to budgetary constraints, the flight program implementation has been delayed. When the flight schedule becomes firm, this document will be reviewed and revised, as necessary, in light of any changes to the program.

**DATES:** Written comments are required by March 18, 1991.

**POINT OF CONTACT:** Mr. D.R. Gallien, Address: U.S. Army Strategic Defense Command, CSSD-EN, Post Office Box 1500, Huntsville, AL 35807-3801, Fax (205) 955-3958.

**SUPPLEMENTARY INFORMATION:** The USASDC was assigned the mission of acquiring critical mid-course data on ballistic missile re-entry vehicles and decoys; EDX would accomplish this mission. The EDX program would use

the ARIES booster to launch a suborbital sensor into space to observe a target ballistic missile re-entry complex during the mid-course phase of its flight. The proposed EDX program would involve nine flights over three years from two different launch sites after October 1993: The target complex would be released from a MINUTEMAN I missile launched from Vandenberg Air Force Base, California and the EDX booster and sensor payload vehicle would be launched from the Kauai Test Facility (KTF), located on the Pacific Missile Range Facility (PMRF), Kauai, Hawaii. Current launch use activities would continue, however, public access through these areas would be limited for a total of less than 1 day over a three year period.

The EDX program would include a number of activities to be conducted at seven different sites. These activities are categorized as design, fabrication/assembly/testing, construction, flight preparation, launch/flight/data collection, payload recovery, sensor payload vehicle refurbishment, data analysis, and site maintenance/disposition. The locations and types of EDX activities are: Vandenberg Air Force Base, California/Western Test Range, flight preparation, launch/flight/data collection; Pacific Missile Range Facility, Kauai, Hawaii, construction, flight preparation, launch/flight/data collection, payload recovery, sensor payload vehicle refurbishment, site maintenance/disposition; Sandia National Laboratories, New Mexico, design, fabrication/assembly/testing; U.S. Army Kwajalein Atoll, Republic of the Marshall Islands, flight preparation, launch/flight/data collection; Hill Air Force Base, Utah, fabrication/assembly/testing; Space Dynamics Laboratory, Utah State University, Logan, Utah, design, fabrication/assembly/testing, data analysis; and Boeing Aerospace and Electronics, Kent Space Center, Kent, Washington, design, fabrication/assembly/testing, sensor payload vehicle refurbishment, data analysis.

To determine the potential for significant environmental impacts as a result of the EDX program, the magnitude and frequency of the tests that would be conducted at the proposed locations were compared to the current activities and existing conditions at those locations. To assess possible impacts, each activity was evaluated in the context of the following environmental components: Air quality, biological resources, cultural resources, hazardous materials/waste, infrastructure, land use, noise, public