

BRAC/GC/dch
May 19, 2005

MEMORANDUM FOR THE COMMISSIONERS
BASE CLOSURE AND REALIGNMENT COMMISSION

Subj: PROCEDURAL RULES OF THE 2005 DEFENSE BASE CLOSURE AND
REALIGNMENT COMMISSION

Encl: (1) Subject rules (proposed)

1. The enclosed procedural rules have been modified from the rules used by prior BRACs to include the most recent statutory changes, specifically the seven vote requirement to 1) consider adding an installation to the Secretary's list of installations recommended for closure or realignment and 2) actually place a proposed installation on the list to the President. The rules will at the direction of the Chairman be presented for adoption by the Commission at the administrative meeting to be conducted at the conclusion of the Thursday morning hearing.

2. The rules are brief and straightforward. This memorandum discusses several key points about them.

a. **Quorums**

For hearings held to receive public comment, a quorum shall consist of one or more members designated by the Chairman.

When the Commission meets to consider:

- the recommendations of the Secretary of Defense
- the Commission's report to the President, or
- a revised list of recommendations for closures and realignments (except "additions" discussed below)

a quorum shall consist of a majority of members serving at that time.

Discussion

One or more Commissioners can hold a hearing, but at least five (5) of nine (9) Commissioners must be present for the Commission to consider and act on any closure or realignment recommendation, except for "additions." An "addition" to the Secretary's list is the closure of an installation not recommended by the Secretary for such action or the realignment of an installation that would result in a reduction in the force structure of that installation that was not recommended by the Secretary. In such cases, a quorum shall consist of seven (7) of the members then serving.

b. **Voting**

The rules require that when the Commission meets to consider:

- the recommendations of the Secretary of Defense

- the Commission's report to the President, or
- a revised list of recommendations for closures and realignments

Once a quorum has been established, "a vote shall be required of the Commission to dispense with any of the above responsibilities or to ratify any actions of the Commission."

The rules continue to provide that any action taken by the Commission concerning these three areas of the Commission responsibilities "will be by a majority vote of the Commission serving at that time." (Except as discussed above for "additions.")

The rules allow for any other issues that may arise during Commission meetings or hearings to be resolved by a "simple majority of Commissioners present."

The rules allow for Commissioner to vote in person or by proxy. (See discussion on proxies below.)

Discussion

The votes of a majority of the Commissioners are required to make any changes to the Secretary's list, except "additions," for which seven (7) votes are required. A tie vote on a motion to drop an installation from the Secretary's list or otherwise change his recommendations means that the motion would fail, and the Secretary's recommendations would prevail.

c. Proxies

The rules allow proxy voting.

Under Rule 9, a Commissioner may designate another member to vote and otherwise act for the first member when he or she will be absent. However, the absent Commissioner must "issue a written proxy stating the specific or limited purposes for which the proxy can be exercised." Rule 9 also provides that "Where the margin of decision would be supplied by proxy vote, the proxy shall be considered invalid and the matter under consideration shall be considered to have failed."

Discussion

The rule on proxy voting allows a Commissioner who might be ill or for other compelling reasons unable to attend a meeting to cast a vote. There is no indication in BRAC records that proxy votes have ever been cast.

Blanket proxies are not allowed. The rule requires "a written proxy stating the specific or limited purpose for which the proxy can be exercised." An absent Commissioner cannot give to another Commissioner the ability to vote a proxy on an issue in any way the Commissioner determines appropriate at the time.

DAVID C. HAGUE
General Counsel

Procedural Rules of the 2005 Defense Base Closure and Realignment Commission

Rule 1. The Defense Base Closure and Realignment Commission ("Commission") was established by the Defense Base Closure and Realignment Act of 1990, Part A of Title XXIX of Public Law 101-510, as amended by Title XXX of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, and further amended by Section 2822, Subtitle C, Title XXVIII, Division B, of Public Law 108-136 ("Act"). The Commission's operations shall comply with that Act, as amended, and with these Procedural Rules.

Rule 2. The Commission's meetings, other than meetings in which classified information is to be discussed, shall be open to the public. In other respects, the Commission shall comply with the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, and the Federal Advisory Committee Management Final Rule, 41 Code of Federal Regulations Parts 101-6 and 102-3.

Rule 3. The Commission shall meet only during calendar years 2005 and 2006.

Rule 4. The Commission shall meet at the call of the Chairman or the request of a majority of the Commissioners serving at that time.

Rule 5. When the Commission meets to consider (a) the recommendations of the Secretary of Defense ("Secretary") submitted to the Commission in accordance with the Act, (b) the Commission's report to the President in accordance with the Act, or (c) a revised list of recommendations in accordance with the Act, a quorum shall consist of a majority of the members then serving. When the Commission meets to consider the closure of an installation not recommended by the Secretary for such action, or to consider the realignment of an installation that would result in a reduction in the force structure at that installation that was not recommended by the Secretary, a quorum shall consist of seven of the members then serving. When the Commission meets to conduct public hearings to receive public comment on the recommendations of the Secretary or the proceedings of the Commission, a quorum shall consist of one or more members designated by the Chairman.

Rule 6. When the Commission meets to consider (a) the recommendations of the Secretary submitted to the Commission in accordance with the Act, (b) the Commission's report to the President in accordance with the Act, or (c) a revised list of recommendations in accordance with the Act, and a quorum is present, a vote shall be required of the Commission to dispense with any of the above responsibilities or to ratify any acts of the Commission. The adoption of any action taken by the Commission with regard to (a) the recommendations of the Secretary submitted to the Commission in accordance with the Act, (b) the Commission's report to the President in accordance with the Act, or (c) a revised list of recommendations in accordance with the Act, will be by a majority of the members serving at that time. In the event of a tie vote on the adoption of any such action, the motion fails for lack of a majority. The adoption of any action taken by the Commission with regard to the closure of an installation not recommended by the Secretary for such action, or to consider the realignment of an installation that would

result in a reduction in the force structure at that installation that was not recommended by the Secretary, will be by seven of the members then serving. The resolution of all other issues arising in the normal course of Commission meetings or hearings shall be by a simple majority of Commissioners present. The Commissioners shall vote in person, except when a proxy is exercised under Rule 9.

Rule 7. The Chairman shall preside at meetings and public hearings of the Commission when he is present. In the Chairman's absence, he or she shall designate another member of the Commission to preside.

Rule 8. The Chairman, or in his absence, the presiding Commissioner, shall have the authority to ensure the orderly conduct of the Commission's business. This power includes, without limitation, recognizing members of the public to speak, imposing reasonable limitations on the length of time a speaker may hold the floor, determining the order in which members of the Commission may question witnesses, conducting votes of members of the Commission, and designating Commissioners for the conduct of public hearings.

Rule 9. One Commissioner may designate another Commissioner to vote and otherwise act for the first member when he or she will be absent, but only where the first Commissioner has previously issued a written proxy to the second stating the specific, limited purpose for which the proxy is to be exercised. Where the margin of decision would be supplied by a proxy vote, the proxy shall be considered invalid and the matter under consideration shall be considered to have failed.

Rule 10. These rules may be amended by a majority vote of the Commissioners serving at the time.

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**Office of General Counsel
Defense Base Closure and Realignment Commission**

Discussion of Additional Procedural Rules

August 19, 2005

Additional Procedural Rules of the 2005 Defense Base Closure and Realignment Commission, Rules 11 through 14, are designed to provide a general procedural framework for the final deliberations. The salient points are:

- amendments to the Secretary's recommendations, and to the further realignments or closures placed under consideration by the Commission on July 19 will be made by motion, seconded, and vote
- amendments shall be in writing, and the written text controls
- amendments, if offered, may be withdrawn by the proponent
- defeated amendments may be reconsidered with the consent of the majority
- adopted motions may be reconsidered and revised by a new amendment with the consent of the majority
- amendments shall be filed with OGC not later than 6 p.m. EST August 22
- after the filing deadline for amendments, new amendments may be introduced only with the consent of the majority
- the Chairman may table a motion to amend at any time prior to vote
- tabled amendments must be considered before the close of final deliberations on or about August 27, unless withdrawn

Additional Procedural Rules of the 2005 Defense Base Closure and Realignment Commission

Rule 11. Amendments to the recommendations of the Secretary of Defense in Final Deliberations. When the Commission meets to deliberate and vote on any action that would amend the recommendations of the Secretary of Defense, the Commission shall proceed by motion, seconded, and vote. All such motions shall be offered in writing. In the event of a conflict between the written text of the motion and the oral description of that motion, the text of the written motion shall control. A Commissioner may withdraw a motion that he or she offered at any point prior to the Commission's vote on the motion. A motion that is defeated may be reconsidered by the Commission by a vote of the majority of the Commissioners then serving.

Rule 12. The Chairman shall define a general format for substantive motions that would amend the recommendations of the Secretary of Defense. The format for such motions shall include the proposed amendment and the associated findings required by the Defense Base Closure and Realignment Act. Each Commissioner shall provide any amendments that he or she intends to offer to the Commission Office of General Counsel as far in advance as possible to the final deliberations, but in no case later than 6 p.m. Eastern Standard Time on Monday, August 22, 2005. The Office of General Counsel shall ensure that each motion to amend conforms to the format defined by the Chairman. The Office of General Counsel shall take appropriate measures to ensure the confidentiality of the motions as predecisional matters until such time as the motion is offered before the Commission. By a vote of the majority of the Commissioners then serving, a Commissioner may offer a motion that was not previously filed with the Office of General Counsel in accordance with the timeframe established by this rule.

Rule 13. In addition to the powers enumerated in Rule 8, the Chairman shall have the authority to table any substantive motion at any time prior to the vote of the Commission. Any motion tabled by the Chairman, if not sooner withdrawn by the Commissioner who offered the motion, must be put to a vote before the closure of final deliberations.

Rule 14. All adopted motions, both as to findings and recommendations, are subject to further revision by later motions approved by the consent of a majority of Commissioners prior to the completion of final deliberations on or about August 27, 2005. The Commission Staff are authorized to make non-substantive technical, grammatical and administrative corrections to the proceedings of the Commission, subject to the approval of the Chairman.

Rule 15. All Commissioners present for deliberations shall vote on all procedural motions. A Commissioner who is present may abstain from voting on an action that would amend the recommendations of the Secretary of Defense only on the basis of a recusal.