

land reclamation program, at TAC §§ 12.800 through 12.817. The codification proposal includes conforming Texas' regulations to the Texas Administrative Code formatting syntax, correcting typographical errors, and making other editorial changes.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on March 10, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public

hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have

a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97-4340 Filed 2-20-97; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 175

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

ACTION: Proposed rule.

SUMMARY: This part promulgates policies and procedures for implementing section 2837 of the National Defense Authorization Act for FY96 concerning the Federal agency lease back of property transferred to Local Redevelopment Authorities (LRAs) at installations approved for closure or realignment.

DATES: Comments must be received by April 22, 1997.

ADDRESSES: Comments must be forwarded to the Base Closure and Community Reinvestment Office, 400 Army-Navy Drive, Suite 200, Arlington,

VA 22202 (email: base—reuseacq.osd.mil).

FOR FURTHER INFORMATION CONTACT:

Jennifer Atkin, Base Closure and Community Reinvestment Office, 400 Army-Navy Drive, Suite 200, Arlington, VA 22202, telephone (703) 604-2400.

SUPPLEMENTARY INFORMATION:

Background Information

Large parcels of surplus BRAC property are frequently conveyed to an LRA for use in accordance with the LRA's redevelopment plan. Because Federal users have priority claim on this property, small parcels or even individual buildings within or adjacent to the large parcel may be claimed by a Federal entity. These Federal uses are included as part of the LRA's redevelopment plan and are compatible with the proposed use of the surrounding property. Should the Federal entity depart at some point in the future, however, the property would be disposed of by the General Service Administration in accordance with the Federal Real Property and Administrative Services Act. This subsequent Federal action could disrupt local economic recovery efforts by requiring the community to go through another lengthy Federal real property disposal process, and could result in uses that are incompatible with the community's redevelopment plans.

Congress recognized that this piecemeal approach could be harmful to long-range planning and development opportunities and changed the law to enable more community control over redevelopment while still allowing the Federal government the ability to utilize government property without additional costs. Section 2837 of the National Defense Authorization Act for FY 1996 (Pub. L. 104-106) amends the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, 10 U.S.C. 2687 note) to allow base closure property that is still needed by the Department of Defense or another Federal agency to be transferred to an LRA, provided the LRA leases the property back to the Federal entity. The lease cannot require rental payments.

Applicability

The "leaseback" is a new authority, not a new requirement. Ultimately, the decision whether to transfer property under this authority rests with the military department keeping in mind that the Department of Defense cannot require Federal agencies to give up right of ownership in order for the LRA to take advantage of a leaseback of the property. If a leaseback is requested by

the LRA, however, Federal agencies are urged to give full consideration to leasing instead of owning the property.

This authority can be used to transfer property at BRAC 91, 93, and 95 sites. In addition, it can be used to transfer property needed by existing Federal tenants or Federal departments or agencies desiring to locate onto the property. Military Departments can only transfer property and then lease it back if they are acting as an executive agent on behalf of a Defense Agency or if the Secretary of the Military Department certifies that the transaction is in the best interest of the Military Department and consistent with the recommendations of the Base Closure Commission.

Lease Arrangements

If an LRA desires a leaseback of property, it will be the responsibility of the LRA to offer the Federal department or agency lease arrangements that encourage choosing the leaseback option. The goal should be offer terms that afford the Federal department or agency rights as close to those associated with ownership of the property as is practicable. Subject to the requirements outlined in this rule (including a prohibition against charging rental payments), the LRA and Federal entity have significant latitude to negotiate a lease that is beneficial to both parties and are encouraged to be creative in establishing the lease parameters.

Conveyance Process

This rule establishes two options for conveyance of leaseback property to an LRA: (1) Conveyance as part of an Economic Development Conveyance (EDC) using the existing EDC procedures, and (2) conveyance of property not associated with an EDC using procedures established in this rule. In this case, the LRA will be required to show how a leaseback is necessary for the long-term economic redevelopment of the installation property.

Statement of Determination and Certifications

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant regulatory action as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic

impact on a substantial number of small entities.

Public Law 104-13, "Paperwork Reduction Act of 1995" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose any reporting or recordkeeping requirements.

List of Subjects in 32 CFR Part 175

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

Accordingly, 32 CFR part 175 is proposed to be amended to read as follows:

PART 175—[AMENDED]

1. The authority citation for 32 CFR part 175 continues to read as follows:

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

2. Section 175.3 is proposed to be amended by adding a new paragraph (l) to read as follows:

§ 175.3 Definitions.

* * * * *

(1) *Similar use.* A use that is comparable to or essentially the same as the use under the original lease.

* * * * *

3. Sections 175.4, 175.5, and 175.6 are proposed to be revised to read as follows:

§ 175.4 Policy.

It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases—more quickly, more effectively, and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation. This part does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103-160, Pub. L. 103-421, or Title XXVIII of Pub. L. 104-106.

§ 175.5 Responsibilities.

(a) The Deputy Under Secretary of Defense (Industrial Affairs and Installations), after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue guidance

through the publication of a manual or other such document as may be necessary to implement laws, directives and instructions on the retention or disposal of real and personal property at closing or realigning bases.

(b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security and the Deputy Under Secretary of Defense (Industrial Affairs and Installations) on revitalizing base closure communities.

§ 175.6 Delegations of authority.

(a) The authority provided by sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 and 484) for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; September 13, 1991; and, September 1, 1995.¹

Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

(b) Authorities delegated to the Deputy Under Secretary of Defense (Industrial Affairs and Installations)² by § 174.5 are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this part or other DoD directive, instruction, manual, or regulation. These authorities may be delegated further.

4. Section 175.7 is proposed to be amended by revising paragraphs (a)(13)(i), (d)(3)(i), and by adding paragraph (k) to read as follows:

§ 175.7 Procedures.

* * * * *

(a) * * *

(13) * * *

(i) In unusual circumstances, extensions beyond six months can be granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

* * * * *

(d) * * *

(3) * * *

(i) In the event there is no LRA recognized by DoD and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph (a)(13) of this section, (unless an extension of time has been granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations)), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

* * * * *

(k) *Leaseback of property at base closure and realignment sites.* (1) 10 U.S.C. 2687 note (BRAC 1990), as added by section 2837 of Pub. L. 104-106, gives the Secretary of Defense the authority to transfer property that is still needed by a Federal Department or Agency to an LRA provided the LRA agrees to lease the property back to the Federal Department or Agency in accordance with all statutory and regulatory guidance. The purpose of this authority, hereinafter referred to as a "leaseback", is to enable the LRA to obtain ownership of the property pursuant to the BRAC process while still ensuring that the Federal need for use of the property is accommodated.

(2) Subject to BRAC 1990 and this part, the decision whether to transfer property pursuant to a leaseback rests with the relevant military department. However, a military department may only transfer property via a leaseback if the Federal entity that needs the property agrees to the leaseback arrangement.

(3) If for any reason property cannot be transferred pursuant to a leaseback (e.g., the relevant Federal Agency prefers ownership, the LRA and the Federal entity cannot agree on terms of the lease, or the military department determines that a leaseback would not be in the Federal interest), such property shall remain in Federal ownership unless and until the relevant landholding entity determines that it is surplus pursuant to the Federal Property Management Regulations.

(4) If a building or structure is proposed for transfer under this authority, that which is leased back to the Federal Department or Agency may be all or a portion of that building or structure.

(5) The leaseback authority may be used at all installations approved for closure or realignment under BRAC 1990.

(6) Transfers under this authority must be to an LRA.

(7) Transfers under this authority may be by lease in furtherance of conveyance or deed. A lease in furtherance of conveyance is appropriate only in those circumstances where deed transfer cannot be accomplished because the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.) for such transfer have not been met. The lease in furtherance of conveyance or accompanying contract shall include a provision stating that the LRA agrees to take title to the property when requirements for the transfer have been satisfied.

(8) The leaseback authority can be used to transfer property that is needed either by existing Federal tenants or by Federal Departments or Agencies desiring to locate onto the property after operational closure. The Military Department that is closing or realigning the installation may not transfer property to an LRA under this authority and lease it back unless:

(i) The Military Department is acting in an Executive Agent capacity on behalf of a Defense Agency that certifies that a leaseback is in the interest of that Defense Agency; or,

(ii) The Secretary of the Military Department certifies that a leaseback is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

(9) Property eligible for a leaseback is not surplus because it is still needed by a Federal entity. However, notwithstanding that the property is not surplus and that the LRA would not otherwise have to include such property in its redevelopment plan, the LRA should include the proposed leaseback of property in its redevelopment plan, taking into account the planned Federal use of such property.

(10) The terms of the LRA's lease to the Federal entity should afford the Federal Department or Agency rights as close to those associated with ownership of the property as is practicable. The requirements of the General Services Acquisition Regulation (GSAR) (48 CFR part 570) are not applicable to the lease, but provisions in the GSAR may be used to the extent they are consistent with this Part. The terms of the lease are negotiable subject to the following:

(i) The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal

¹ Available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "base-reuse@acq.osd.mil"

² A Deputy Secretary of Defense memorandum of May 15, 1996, "OUSD (Acquisition and Technology Reorganization)" disestablished the office of the Assistant Secretary of Defense for Economic Security and established the office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations). Copies are available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "base-reuse@acq.osd.mil"

Department or Agency concerned. The lease term should be based on the needs of the Federal entity.

(ii) The lease, or any renewals or extensions thereof, shall not require rental payments.

(iii) The lease shall not require the Federal Government to pay the LRA or other local government entity for municipal services including fire and police protection.

(iv) The Federal Department or Agency concerned may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal Department or Agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.

(v) The lease shall include a provision prohibiting the LRA from transferring ownership rights to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal Department or Agency occupying the leaseback property.

(vi) The lease shall include a provision specifying that if the Federal Department or Agency concerned no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal Department or Agency using the leased property for a use similar to the use under the lease.

(A) The General Services Administration shall assist with identifying other Federal interest in leasing the property.

(B) Prior to exercising such provision, the Federal Department or Agency shall consult with the LRA concerned, or the elected body with jurisdiction over the property if the LRA no longer exists.

(vii) The terms of the lease shall provide that the Federal Department or Agency may repair, improve, and maintain the property at its expense without the approval of the LRA.

(11) Conveyance to an LRA under this authority shall be in one of the following ways:

(i) Lease back property that is to be conveyed under an Economic Development Conveyance (EDC) shall be conveyed as part of the EDC in accordance with the existing EDC procedures and § 175.7(k)(11)(ii)(B)(4). The LRA shall submit the following in addition to the application requirements outlined in § 175.7(e)(5):

(A) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(B) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(C) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(ii) Leaseback property not associated with property to be conveyed under an EDC shall be conveyed in accordance with the following procedures:

(A) As soon as possible after the LRA's submission of its redevelopment plan to the DoD and HUD, the LRA shall submit a request for a leaseback to the Military Department. The Military Department may impose additional requirements as necessary, but at a minimum, the request shall contain the following:

(1) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(2) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(3) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(B) The transfer may be for consideration at or below the estimated present fair market value. In those instances in which the property is conveyed for consideration below the estimated present fair market value, the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained.

(1) In a rural area, the transfer shall comply with § 175.7(f)(5).

(2) Payment may be in cash or in-kind.

(3) The Military Department shall determine the estimated present fair market value of the property before transfer under this authority.

(4) The exact amount of consideration, or the formula to be used to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer under this authority.

Dated: February 18, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-4333 Filed 2-20-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-97-007]

RIN 2115-AE46

Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend permanent special local regulations established for marine events held in the Norfolk Harbor, Elizabeth River, between Norfolk and Portsmouth, Virginia by identifying specific annual events for which the regulated area will be in effect. This action is intended to update the regulation in order to enhance the safety of life and property during the events.

DATES: Comments must be received on or before April 22, 1997.

ADDRESSES: Comments may be mailed to Commander (Aosr), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or hand delivered to Room 516 at the same address between 7:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6204. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Search and Rescue Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comment should include their names and addresses, identify this rulemaking (CGD 05-97-007) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.