

certification of the Model A380-800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380-800 airplane was adjusted to reflect the new application date.

The Model A380-800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

#### Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380-800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380-800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380-800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93-574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21-69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21-69, effective September 16, 1991.

#### Discussion of Novel or Unusual Design Features

While the main deck of the A380-800 airplane has five pairs of type A exits, these are not sufficient for the total number of persons on board the airplane. Therefore, the upper deck exits must also be used as ditching exits. As a result, these exits are being equipped with slide/rafts. With two decks, there is the possibility of interference between the slides or rafts of the upper deck and the slides or rafts of the main deck.

Since 14 CFR part 25 does not address the use of upper deck exits as ditching exits, the FAA is proposing special conditions to ensure that occupants can be safely evacuated from these exits following a ditching event.

#### Applicability

As discussed above, these special conditions are applicable to the Airbus A380-800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21-69, effective September 16, 1991.

#### Conclusion

This action affects only certain novel or unusual design features of the Airbus A380-800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

#### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

#### The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for the Airbus A380-800 airplane.

In addition to the requirements of §§ 25.801, 25.807(i), 25.810, 25.1411, and 25.1415, the following special conditions apply:

a. For door sill heights that would be greater than six (6) feet above the waterline during a ditching event, an assist means must be provided from the airplane to the water.

b. Boarding of the upper deck slide/rafts must be demonstrated for the rated

and overload capacity of the slide/rafts from the representative door sill heights associated with planned and unplanned ditching. The boarding procedure must ensure that the occupants boarding the slide/rafts remain on the slide/raft whether the occupants enter the slide or raft by walking, jumping or sliding. In addition, the boarding procedure must not result in injury to either occupants entering the slide/raft or occupants already in the slide/raft.

c. When door M3, the overwing exit on the main deck, is used to launch slide/rafts or life rafts, there must be means to prevent the release of the upper deck slide/rafts on top of the slide/raft or life rafts launched from that door. Those means may use either airplane design or a crew procedure.

d. It must be demonstrated that the upper deck slide/rafts located at doors U1 and U2 (just forward and just aft of the wing) can be safely separated from the airplane. Safety considerations include damage to the slide/rafts, injury to occupants of the slide/raft, ejection of the occupants from the slide/raft into the water as a result of the contact with the wing, and the slide/raft becoming beached on the wing. Probable damage to the wing leading and trailing edge flight control structure during a water landing must be considered when assessing the damage caused to the slide/rafts or life rafts.

e. It must be demonstrated that when the upper deck slide/rafts are separated from the airplane, they do not injure occupants of the slide/raft, eject occupants of the slide/raft into the water, or damage the slide/raft in a way that affects its seaworthiness.

Issued in Renton, Washington, on July 19, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Parts 174, 175, and 176

RIN 0790-AH91

#### Revitalizing Base Closure Communities and Addressing Impacts of Realignment

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (DoD) proposes to consolidate parts 174

and 175, and amend part 176 of title 32, Code of Federal Regulations. These parts provide rules for the disposal of property at installations being closed and realigned and how to address the impacts of realignment at receiving installations. The resulting part 174 also contains amendments to address changes in the laws governing base closure and realignment (BRAC) made since the current parts 174 and 175 were promulgated. In addition to the amendments to address changes in law, additional amendments are proposed to reflect current DoD policy and to address various environmental requirements not currently addressed in parts 174 and 175. The amendment to part 176 is ministerial to reflect the renumbering of parts 174 and 175.

**DATES:** Submit comments on or before October 11, 2005.

**ADDRESSES:** Address all comments concerning this proposed rule to—Attn: BRAC Regulations, Deputy Under Secretary of Defense (Installations & Environment), 3015 Defense Pentagon, Washington, DC 20301–3015.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven N. Kleiman at (703) 571–9085.

**SUPPLEMENTARY INFORMATION:** This action is authorized by the Defense Base Closure and Realignment Act of 1990, Title XXIX of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. 101–510; the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub. L. 103–421; the Military Construction Authorization Act for Fiscal Year 1994, Division B of Pub. L. 103–160; and 10 U.S.C. 113.

The Department of Defense engaged in four rounds of base closures and realignments announced in 1988, 1991, 1993, and 1995. The Congress has authorized another round of base closures and realignments in 2005 and the process for selecting installations for closure and realignment is currently underway. In anticipation of the recommendations of the 2005 Defense Base Closure and Realignment Commission becoming law, the DoD is revising its existing regulations on the disposal process to ensure they reflect current law and policy and take advantage of experience gained from the previous four rounds.

The current parts 174 and 175 reflect two separate DoD issuances: DoD Directive 4165.66, Revitalizing Base Closure Communities and Community Assistance, and DoD Instruction 4165.67, Revitalizing Base Closure Communities—Base Closure Community Assistance. These two issuances are being revised to become

DoD Directive 4165.66, Revitalizing Base Closure Communities and Addressing Impacts of Realignment, and DoD Instruction 4165.67, Revitalizing Base Closure Communities and Addressing Impacts of Realignment. The proposed part 174 will reflect these two revised DoD issuances. Because the Instruction is tiered off of, and subservient to, the Directive, there is no reason to continue with separate parts in title 32. Combining these two DoD issuances, when published in the Code of Federal Regulations, helps to clarify and consolidate the rules that the two issuances jointly address.

Since the original publication of the current parts 174 and 175, which directly reflect the formatting and style of the current DoDD 4165.66 and DoDI 4165.67, the Department of Defense has changed the formatting and style of its issuances. This new formatting and style is reflected in the proposed amendments, particularly with regard to the proposed sections 174.1 through 174.5, which reflect the standardized language now used in DoD issuances. Of immediate note is the division of the material into separate sections based on subject, rather than having most of the material of the current part 175 contained in a single long section.

The proposed section 174.1 continues to authorize publication of a DoD manual, DoD 4165.66–M, which is renamed the “Base Redevelopment and Realignment Manual”.

The proposed section 174.3 contains new and updated definitions, relying, when appropriate, on adopting by reference definitions contained in law.

The proposed section 174.4 contains updated policy statements. The policy statements are reflective of current DoD policy and are similar to the policy enunciated in the Secretary of Defense’s recommendations to the 2005 Defense Base Closure and Realignment Commission.

The proposed section 174.5 contains more expansive delegations and re-delegations of authority. It does not include authority to select installations for closure and realignment, since that is not the subject of the proposed part. It also specifically excludes authority under section 330 of the National Defense Authorization Act for Fiscal Year 1993, because that authority has been delegated by the Secretary of Defense to the General Counsel of the Department of Defense.

The proposed section 174.6 more closely tracks the statutory role given the local redevelopment plan than does the current provision.

The proposed section 174.7 more closely tracks statutory provisions by

clarifying the process for transfer of property to other DoD Components and Federal agencies. One goal is to expedite the process for determining when excess real property will be transferred to another Federal agency. Expediting this process should aid the Local Redevelopment Authority (LRA) in formulating its redevelopment plan.

The proposed section 174.8 recognizes changes made in the law governing disposal by referring the user to part 176, which contains the current provisions governing disposal outside of the Federal Government.

The proposed section 174.9 provides new language addressing economic development conveyances (EDCs) to reflect changes in the law. It deletes prior language that is now either inaccurate or unnecessary. It recognizes the duty of the Secretary to seek to obtain fair market value for EDCs. It recognizes the statutory purpose of job generation for an EDC. It explicitly adopts the use of the Uniform Appraisal Standards for Federal Land Acquisitions, published by the Appraisal Institute in cooperation with the U.S. Department of Justice.

The proposed section 174.10 provides new language addressing consideration for EDCs. It recognizes the statutory preference for obtaining fair market value with the alternative of a no-cost EDC. The changes from prior language track changes in the law.

The proposed section 174.11 changes prior language by emphasizing that the purpose of leasing property to non-Federal entities is to secure the final disposition of the real property.

The proposed section 174.12 provides new language to reflect statutory changes in the leasing back by Federal agencies of transferred real property. It clarifies when such leases with an LRA can be used and when and how they can be terminated. In the past, such leasing arrangements were referred to as “leasebacks”.

The proposed section 174.13 reflects changes in the law dealing with the disposal of personal property. It clarifies what constitutes personal property, when and how an inventory will be conducted, and when further action can be taken with regard to the personal property. It more closely tracks the current law with regard to what qualifies as personal property for purposes of an inventory. It explicitly states that fixtures are not part of the personal property, it being the common rule that fixtures are part of the real property. It clarifies that only property owned by the United States can be considered under the provision, since property belonging to the State or to

private individuals does not belong to the United States and cannot be included for purposes of this provision.

The proposed section 174.14 revises language to reflect current law relating to time limits on maintenance of property. It deletes prior language that is no longer accurate.

The current rule does not address certain environmental matters that the DoD has found, as a result of previous BRAC rounds, to be central to the disposal and realignment process. The proposed changes to the current rule address four issues: (1) Indemnification under Section 330 of the National Defense Authorization Act for Fiscal Year 1993; (2) decontamination of potentially explosive materials; (3) the National Environmental Policy Act (NEPA); and (4) historic preservation.

The proposed section 174.15 is entirely new. It provides guidance to DoD personnel regarding the application of section 330 of the National Defense Authorization Act for Fiscal Year 1993. Because that provision of law is handled under other procedures and by an office other than the organizations applying the revised part 174, explicit guidance is provided to the DoD Components to avoid attempting to apply that provision of law in the process addressed by the revised part 174.

The proposed section 174.16 is entirely new. It provides direction to DoD Components to ensure that restoration projects involving contamination by potentially explosive materials are properly coordinated with the DoD Explosives Safety Board in accordance with DoD Directive 6055.9.

The proposed section 174.17 is entirely new. It provides direction to DoD Components that when conducting environmental analysis pursuant to the National Environmental Policy Act of 1969 (NEPA), the analysis will be conducted in accordance with the regulations of the Military Department exercising real property accountability for the installation. This provision clarifies which NEPA regulation will control when the DoD Component being realigned to an installation is different from the Military Department that has jurisdiction over the installation.

The proposed section 174.18 is entirely new. It provides guidance and authority for use of what are generally referred to as preservation easements when disposing of property that is eligible for listing on the National Register under the National Historic Preservation Act.

#### Executive Order 12866

It has been determined that this rule is not a significant regulatory action. This rule does not:

- (1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The regulatory changes proposed in this notice address the disposal of Government property, primarily to LRAs, which are local governmental entities. The impacts on small entities that result from base closure are due to the closure of installations, which is not covered by these regulations. These regulations deal primarily with the subsequent disposal of property.

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### List of Subjects in 32 CFR Parts 174, 175, and 176

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

Accordingly, 32 CFR part 174 is revised, part 175 is removed, and part 176 is amended to read as follows:

1. Part 174 is revised to read as follows:

#### PART 174—REVITALIZING BASE CLOSURE COMMUNITIES AND ADDRESSING IMPACTS OF REALIGNMENT

##### Subpart A—General

- Sec.
- 174.1 Purpose
  - 174.2 Applicability
  - 174.3 Definitions

##### Subpart B—Policy

- 174.4 Policy

- 174.5 Responsibilities

#### Subpart C—Working with Communities and States

- 174.6 LRA and the Redevelopment Plan

#### Subpart D—Real Property

- 174.7 Retention for DoD Component use and transfer to other Federal agencies
- 174.8 Screening for properties covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, cross-reference
- 174.9 Economic development conveyances
- 174.10 Consideration for economic development conveyances
- 174.11 Leasing of real property to non-Federal entities
- 174.12 Leasing of transferred real property by Federal agencies

#### Subpart E—Personal Property

- 174.13 Personal property

#### Subpart F—Maintenance and Repair

- 174.14 Maintenance and repair

#### Subpart G—Environmental Matters

- 174.15 Indemnification under Section 330 of the National Defense Authorization Act for Fiscal Year 1993
- 174.16 Decontamination of potentially explosive materials
- 174.17 NEPA
- 174.18 Historic preservation

**Authority:** 10 U.S.C. 113 and 10 U.S.C. 2687 note.

#### Subpart A—General

##### § 174.1 Purpose.

This part: (a) Establishes policy, assigns responsibilities, and implements base closure laws and associated provisions of law relating to the closure and the realignment of installations. It does not address the process for selecting installations for closure or realignment.

(b) Authorizes the publication of DoD 4165.66-M,<sup>1</sup> “Base Redevelopment and Realignment Manual,” in accordance with DoD 5025.1-M,<sup>2</sup> “DoD Directive System Procedures,” March 2003.

##### § 174.2 Applicability.

This part applies to: (a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the “DoD Components”).

<sup>1</sup> Document scheduled for publication after completion of the Directive.

<sup>2</sup> Copies may be obtained at <http://www.dtic.mil/whs/directives/corres/pub1.html>.

(b) Installations in the United States selected for closure or realignment under a base closure law.

(c) Federal agencies and non-Federal entities that seek to obtain real or personal property on installations selected for closure or realignment.

#### § 174.3 Definitions.

(a) *Base closure law*. This term has the same meaning as provided in 10 U.S.C. 101(a)(17)(B) and (C).

(b) *Closure*. An action that ceases or relocates all current missions of an installation and eliminates or relocates all current personnel positions (military, civilian, and contractor), except for personnel required for caretaking, conducting any ongoing environmental cleanup, or property disposal. Retention of a small enclave, not associated with the main mission of the base, is still a closure.

(c) *Consultation*. Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement.

(d) *Date of approval*. This term has the same meaning as provided in section 2910(8) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(e) *Excess property*. This term has the same meaning as provided in 40 U.S.C. 102(3).

(f) *Installation*. This term has the same meaning as provided in the definition for “military installation” in section 2910(4) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(g) *Local Redevelopment Authority (LRA)*. This term has the same meaning as provided in the definition for “redevelopment authority” in section 2910(9) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(h) *Military Department*. This term has the same meaning as provided in 10 U.S.C. 101(a)(8).

(i) *National Environmental Policy Act (NEPA)*. The National Environmental Policy Act of 1969, Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*, as amended.

(j) *Realignment*. This term has the same meaning as provided in section 2910(5) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(k) *Secretary concerned*. This term has the same meaning as provided in 10 U.S.C. 101(a)(9) (A), (B), and (C).

(l) *Surplus property*. This term has the same meaning as provided in 40 U.S.C. 102(10).

(m) *Transition coordinator*. This term has the same meaning as used in section

2915 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160.

#### Subpart B—Policy

##### § 174.4 Policy.

It is DoD policy to:

(a) Act expeditiously whether closing or realigning. Relocating activities from installations designated for closure will, when feasible, be accelerated to facilitate the transfer of real property for community reuse. In the case of realignments, the Department will pursue aggressive planning and scheduling of related facility improvements at the receiving location.

(b) Fully utilize all appropriate means to transfer property. Federal law provides the Department with an array of legal authorities, including public benefit transfers, economic development conveyances at cost and no cost, negotiated sales to state or local government, conservation conveyances, and public sales, by which to transfer property on closed or realigned installations. Recognizing that the variety of types of facilities available for civilian reuse and the unique circumstances of the surrounding communities does not lend itself to a single universal solution, the Department will use this array of authorities in a way that considers individual circumstances.

(c) Rely on and leverage market forces. Community redevelopment plans and military conveyance plans should be integrated to the extent practical and should take account of any anticipated demand for surplus military land and facilities.

(d) Collaborate effectively. Experience suggests that collaboration is the linchpin to successful installation redevelopment. Only by collaborating with the local community can the Department close and transfer property in a timely manner and provide a foundation for solid economic redevelopment.

(e) Speak with one voice. The Department of Defense, acting through the DoD Components, will provide clear and timely information and will encourage affected communities to do the same.

(f) Work with communities to address growth. If installation growth is substantial, the Department will work with the surrounding community so that the public and private sectors can provide the services and facilities needed to accommodate new personnel and their families. The Department recognizes that installation commanders and local officials need to integrate

elements of their growth planning so that appropriate off-base facilities and services are available for arriving personnel and their families.

##### § 174.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue DoD Instructions as necessary to further implement applicable public laws affecting installation closure and realignment implementation and shall monitor compliance with this part. All authorities and responsibilities of the Secretary of Defense—

(1) Vested in the Secretary of Defense by a base closure law, but excluding those provisions relating to the process for selecting installations for closure or realignment;

(2) Delegated from the Administrator of General Services relating to base closure and realignment matters;

(3) Vested in the Secretary of Defense by any other provision relating to base closure and realignment in a national defense authorization act, a Department of Defense appropriations act, or a military construction appropriations act, but excluding section 330 of the National Defense Authorization Act for Fiscal Year 1993; or

(4) Vested in the Secretary of Defense by Executive Order or regulation and relating to base closure and realignment, are hereby delegated to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) The authorities and responsibilities of the Secretary of Defense delegated to the Under Secretary of Defense for Acquisition, Technology, and Logistics under subsection (a) of this section are hereby re-delegated to the Deputy Under Secretary of Defense (Installations and Environment).

(c) The Heads of the DoD Components shall ensure compliance with this part and any implementing guidance.

(d) Subject to the delegations in paragraphs (a) and (b) of this section, the Secretaries concerned shall exercise those authorities and responsibilities specified in subparts C through G of this part.

(e) The cost of recording deeds and other transfer documents is the responsibility of the transferee.

#### Subpart C—Working With Communities and States

##### § 174.6 LRA and the Redevelopment Plan.

(a) The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over

the property. Generally, there will be one recognized LRA per installation.

(b) The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should consider notices of interest received under a base closure law. This section shall not be construed to require a plan that is enforceable under state and local land use laws, nor is it intended to create any exemption from such laws.

(c)(1) The Secretary concerned will develop a disposal plan and, to the extent practicable, complete the appropriate environmental documentation no later than 12 months after receipt of the redevelopment plan. The redevelopment plan will be used as part of the proposed Federal action in conducting environmental analyses required under NEPA.

(2) In the event there is no LRA recognized by DoD or if a redevelopment plan is not received from the LRA within 9 months from the date referred to in section 2905(b)(7)(F)(iv) of Pub. L. 101-510 (unless an extension of time has been granted by the Deputy Under Secretary of Defense (Installations and Environment)), the Secretary concerned shall, after required consultation with the governor and heads of local governments, proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

#### Subpart D—Real Property

##### § 174.7 Retention for DoD Component use and transfer to other Federal agencies.

(a) To speed the economic recovery of communities affected by closures and realignments, the Department of Defense will identify DoD and Federal interests in real property at closing and realigning installations as quickly as possible. The Secretary concerned shall identify such interests. The Secretary concerned will keep the LRA informed of these interests. This section establishes a uniform process, with specified timelines, for identifying real property that is available for use by DoD Components (which for purposes of this section includes the United States Coast Guard) or is excess to the needs of the Department of Defense and available for use by other Federal agencies, and for the disposal of surplus property for various purposes.

(b) Upon the President's submission of the recommendations for base closures and realignments to the Congress in accordance with a base

closure law, the Secretary concerned shall send out a notice of potential availability to the DoD Components and other Federal agencies. The notice of potential availability is a public document and should be made available on a timely basis, upon request. Federal agencies are encouraged to review this list, and to evaluate whether they may have a requirement for the listed properties. The notice of potential availability should describe the property and buildings that may be available for transfer. Installations which wholly or in part are comprised of withdrawn and reserved public domain lands shall implement paragraph (m) of this section at the same time.

(c) The Secretary concerned should consider LRA input, if provided, in making determinations on the retention of property (location and size of cantonment area).

(d) Within one week of the date of approval of the closure or realignment, the Secretary concerned shall issue a notice of availability to the DoD Components and other Federal agencies covering closing and realigning installation buildings and property available for transfer to the DoD Components and other Federal agencies. Withdrawn public domain lands which the Secretary of the Interior has determined are suitable for return to the jurisdiction of the Department of the Interior (DoI) will not be included in the notice of availability.

(e) To obtain consideration of a requirement for such available buildings and property, a DoD Component or Federal agency is required to provide a written, firm expression of interest for buildings and property within 30 days of the date of the notice of availability. An expression of interest must explain the intended use and the corresponding requirement for the buildings and property.

(f)(1) Within 60 days of the date of the notice of availability, the DoD Component or Federal agency expressing interest in buildings or property must submit an application for transfer of such property to a Military Department or Federal agency. In the case of a DoD Component that would normally, under the circumstances, obtain its real property needs from the Military Department disposing of the real property, the application should indicate the property would not transfer to another Military Department but should be retained by the current Military Department for the use of the DoD Component. To the extent a different Military Department provides real property support for the requesting DoD Component, the application must

indicate the concurrence of the supporting Military Department.

(2) Within 90 days of the notice of availability, the Federal Aviation Administration (FAA) should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be governed by paragraph (i) of this section. Instead, the FAA shall work directly with the Military Department to prepare an agreement to assume custody of the property necessary for control of the airspace being relinquished by the Military Department.

(g) The Secretary concerned will keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact Federal agencies which sponsor public benefit conveyances for information and technical assistance. The Secretary concerned will provide to the LRA points of contact at the Federal agencies.

(h) DoD Components and Federal agencies are encouraged to discuss their plans and needs with the LRA, if an LRA exists. If an LRA does not exist, the consultation should be pursued with the governor or the heads of the local governments in whose jurisdiction the property is located. DoD Components and Federal agencies are encouraged to notify the Secretary concerned of the results of this consultation. The Secretary concerned, the Transition Coordinator, and the DoD Office of Economic Adjustment Project Manager are available to help facilitate communication between the DoD Components and Federal agencies, and the LRA, governor, and heads of local governments.

(i) An application for property from a DoD Component or Federal agency must contain the following information:

(1) A completed GSA Form 1334, Request for Transfer (for requests from DoD Components, a DD Form 1354 will be used). This must be signed by the head of the Component or agency requesting the property. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form;

(2) A statement from the head of the requesting Component or agency that the request does not establish a new program (*i.e.*, one that has never been reflected in a previous budget submission or Congressional action);

(3) A statement that the requesting Component or agency has reviewed its real property holdings and cannot satisfy its requirement with existing property. This review must include all property under the requester's accountability, including permits to other Federal agencies and outleases to other organizations;

(4) A statement that the requested property would provide greater long-term economic benefits for the program than acquisition of a new facility or other property;

(5) A statement that the program for which the property is requested has long-term viability;

(6) A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility;

(7) A statement that the size of the property requested is consistent with the actual requirement;

(8) A statement that fair market value reimbursement to the Military Department will be made at the later of January of 2008, or at the time of transfer, unless this obligation is waived by the Office of Management and Budget and the Secretary concerned, or a public law specifically provides for a non-reimbursable transfer (this requirement does not apply to requests from DoD Components);

(9) A statement that the requesting DoD Component or Federal agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Secretary concerned; and

(10) A statement that the requesting agency agrees to accept transfer of the property in its existing condition, unless this obligation is waived by the Secretary concerned.

(j) The Secretary concerned will make a decision on an application from a DoD Component or Federal agency based upon the following factors:

(1) The requirement must be valid and appropriate;

(2) The proposed use is consistent with the highest and best use of the property;

(3) The proposed transfer will not have an adverse impact on the transfer of any remaining portion of the installation;

(4) The proposed transfer will not establish a new program or substantially increase the level of a Component's or agency's existing programs;

(5) The application offers fair market value for the property, unless waived;

(6) The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Secretary concerned; and

(7) The proposed transfer is in the best interest of the Government.

(k) When there is more than one acceptable application for the same building or property, the Secretary concerned shall consider, in the following order—

(1) The need to perform the national defense missions of the Department of Defense and the Coast Guard;

(2) The need to support the homeland defense mission; and

(3) The LRA's comments as well as other factors in the determination of highest and best use.

(l) If the Federal agency does not meet its commitment under subsection (i)(8) of this section to provide the required reimbursement, and the requested property has not yet been transferred to the agency, the requested property will be declared surplus and disposed of in accordance with the provisions of this part.

(m) Closing or realigning installations may contain "public domain lands" which have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for use by the Department of Defense. Lands deemed suitable for return to the public domain are not real property governed by title 40, United States Code, and are not governed by the property management and disposal provisions of a base closure law. Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another Federal agency's use.

(1) The Secretary concerned will provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closure or realignment.

(2) The BLM will review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure or realignment, the BLM will review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved within this time period. The BLM will notify the Secretary concerned as to the final agreed upon withdrawn

and reserved public domain lands at an installation.

(3) Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM will initiate a screening of DoI agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

(4) The Secretary concerned will transmit a Notice of Intent to Relinquish (see 43 CFR Part 2370) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM will complete the suitability determination screening process within 30 days of receipt of the Secretary's Notice of Intent to Relinquish. If a DoD Component is approved to reuse the public domain lands, the BLM will be notified and BLM will determine if the current authority for military use of these lands needs to be modified or amended.

(5) If BLM determines the land is suitable for return, it shall notify the Secretary concerned that the intent of the Secretary of the Interior is to accept the relinquishment of the land by the Secretary concerned.

(6) If BLM determines the land is not suitable for return to the DoI, the land should be disposed of pursuant to base closure law.

(n) The Secretary concerned should make a surplus determination within six (6) months of the date of approval of closure or realignment, and shall inform the LRA of the determination. If requested by the LRA, the Secretary may postpone the surplus determination for a period of no more than six (6) additional months after the date of approval if the Secretary determines that such postponement is in the best interests of the communities affected by the closure or realignment.

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

(2) Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.

(o) Once the surplus determination has been made, the Secretary concerned shall follow the procedures in part 176 of this title.

(p) Following the surplus determination, but prior to the disposal of property, the Secretary concerned may, at the Secretary's discretion,

withdraw the surplus determination and evaluate a Federal agency's late request for excess property.

(1) Transfers under this subsection shall be limited to special cases, as determined by the Secretary concerned.

(2) Requests shall be made to the Secretary concerned, as specified under paragraphs (h) and (i) of this section, and the Secretary shall notify the LRA of such late request.

(3) Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Secretary concerned is reviewing a late request.

**§ 174.8 Screening for properties covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, cross-reference.**

The Departments of Defense and Housing and Urban Development have promulgated regulations to address state and local screening and approval of redevelopment plans for installations covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421). The Department of Defense regulations can be found at part 176 of this title.

**§ 174.9 Economic development conveyances.**

(a) The Secretary concerned may transfer real property and personal property to the LRA for purposes of job generation on the installation. Such a transfer is an Economic Development Conveyance (EDC).

(b) For installations having a date of approval for closure after January 1, 2005, the Secretary concerned shall seek to obtain consideration in connection with any transfer under this section in an amount equal to the fair market value of the property.

(c) An LRA is the only entity able to receive property under an EDC.

(d) A properly completed application will be used to decide whether an LRA will be eligible for an EDC. An LRA may submit an EDC application only after it adopts a redevelopment plan. The Secretary concerned shall establish a reasonable time period for submission of an EDC application after consultation with the LRA. The Secretary will review the application and make a decision whether to make an EDC based on the criteria specified in paragraph (g) of this section; such decision will only be made after the Secretary has notified and obtained the concurrence of the Deputy Under Secretary of Defense (Installations & Environment) of the proposed decision. The terms and conditions of the EDC will be negotiated between the Secretary and the LRA.

(e) The application should explain why an EDC is necessary for job generation on the installation. In addition to the following elements, after the Secretary concerned reviews the application, additional information may be requested to allow for a better evaluation of the application:

(1) A copy of the adopted redevelopment plan.

(2) A project narrative including the following:

(i) A general description of the property requested.

(ii) A description of the intended uses.

(iii) A description of the economic impact of closure or realignment on the local community.

(iv) A description of the financial condition of the community and the prospects for redevelopment of the property.

(v) A statement of how the EDC is consistent with the overall redevelopment plan.

(3) A description of how the EDC will contribute to short- and long-term job generation on the installation, including the projected number and type of new jobs it will assist in generating.

(4) A business/operational plan for the EDC parcel, including such elements as:

(i) A development timetable, phasing schedule, and cash flow analysis.

(ii) A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated present fair market value of the property.

(iii) A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.

(iv) Local investment and proposed financing strategies for the development.

(5) A statement describing why other authorities, such as public or negotiated sales and public benefit conveyances for education, parks, public health, aviation, historic monuments, prisons, and wildlife conservation, cannot be used to accomplish the job generation goals.

(6) Evidence of the LRA's legal authority to acquire and dispose of the property.

(7) Evidence that the LRA has full authority to perform all of the actions required pursuant to the terms of the EDC, and that the officers executing the EDC documents on behalf of the LRA have full authority to do so.

(8) Proof the LRA has obtained sufficient financing for acquiring the

EDC property and carrying out the LRA's redevelopment objectives.

(f) Upon receipt of an application for an EDC, the Secretary concerned will determine whether an EDC is needed for purposes of job generation and examine whether the terms and conditions proposed are fair and reasonable. The Secretary may also consider information independent of the application, such as views of other Federal agencies, appraisals, caretaker costs, and other relevant material. The Secretary may propose and negotiate any alternative terms or conditions that the Secretary considers necessary seeking always to obtain an amount equal to the fair market value.

(g) The following factors will be considered, as appropriate, in evaluating the application and the terms and conditions of the proposed transfer, including price, time of payment, and other relevant methods of compensation to the Federal Government.

(1) Adverse economic impact of closure or realignment on the region and potential for economic recovery through an EDC.

(2) Extent of short- and long-term job generation.

(3) Consistency with the entire redevelopment plan.

(4) Financial feasibility of the development, including market analysis and need and extent of proposed infrastructure and other investments.

(5) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the plan.

(6) Current local and regional real estate market conditions.

(7) Incorporation of other Federal agency interests and concerns, and applicability of, and conflicts with, other Federal surplus property disposal authorities.

(8) Relationship to the overall Military Department disposal plan for the installation.

(9) Economic benefit to the Federal Government, including protection and maintenance cost savings and anticipated consideration from the transfer.

(10) Compliance with applicable Federal, State, interstate, and local laws and regulations.

(h) Before making an EDC, the Secretary concerned shall prepare an estimate of the fair market value of the property.

(1) In preparing the estimate of fair market value, the Secretary concerned shall use the most recent edition of the Uniform Appraisal Standards for Federal Land Acquisitions, published by the Appraisal Institute in cooperation with the U.S. Department of Justice.

(2) The Secretary concerned shall consult with the LRA on valuation assumptions, guidelines, and on instructions given to the appraiser.

(3) The Secretary concerned is fully responsible for completion of the valuation. The Secretary, in preparing the estimate of fair market value shall consider the proposed uses identified in the redevelopment plan to the extent that they are not inconsistent with the highest and best use.

**§ 174.10 Consideration for economic development conveyances.**

(a) For conveyances made pursuant to § 174.9 of this part, the Secretary concerned will review the application for an EDC and negotiate the terms and conditions of each transaction with the LRA. The Secretary will have the discretion and flexibility to enter into agreements that specify the form of payment and the schedule. The consideration may be in cash or in-kind and may be paid over time.

(b) The Secretary concerned shall seek to obtain consideration at least equal to the fair market value, as determined by the Secretary.

(c) Any amount paid in the future should take into account the time value of money and include repayment of interest.

(d) Additional provisions may be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon consideration, including such items as predetermined release prices, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions.

(e)(1) An EDC without consideration may only be made if—

(i) The LRA agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the LRA during at least the first seven years after the date of the initial transfer of property shall be used to support economic redevelopment of, or related to, the installation; and

(ii) The LRA executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision.

(2) The following purposes shall be considered a use to support economic redevelopment of, or related to, the installation—

- (i) Road construction;
- (ii) Transportation management facilities;
- (iii) Storm and sanitary sewer construction;
- (iv) Police and fire protection facilities and other public facilities;

- (v) Utility construction;
- (vi) Building rehabilitation;
- (vii) Historic property preservation;
- (viii) Pollution prevention equipment or facilities;

- (ix) Demolition;
- (x) Disposal of hazardous materials generated by demolition;
- (xi) Landscaping, grading, and other site or public improvements; and
- (xii) Planning for or the marketing of the development and reuse of the installation.

(f) Every agreement for an EDC without consideration shall contain provisions allowing the Secretary concerned to recoup from the LRA such portion of the proceeds from its sale or lease as the Secretary determines appropriate if the LRA does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in paragraph (e)(1) of this section.

**§ 174.11 Leasing of real property to non-Federal entities.**

(a) Leasing of real property to non-Federal entities prior to the final disposition of closing and realigning installations may facilitate state and local economic adjustment efforts and encourage economic redevelopment, but the Secretary concerned will always concentrate on the final disposition of real and personal property.

(b) In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretary concerned may also lease real and personal property, pending final disposition, for less than fair market value if the Secretary determines that:

(1) A public interest will be served as a result of the lease; and,

(2) The fair market value of the lease is unobtainable or not compatible with such public benefit.

(c) Pending final disposition of an installation, the Secretary concerned may grant interim leases which are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Secretary will generally lease to the LRA but can lease property directly to other entities. If the interim lease (after complying with NEPA) is entered into prior to completion of the final disposal decisions, the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing should not delay the final disposal of the property. After completion of the final disposal decisions, the term of the lease may be longer than five years.

(d) If the property is leased for less than fair market value to the LRA and

the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases will be applied by the lessee to the protection, maintenance, repair, improvement, and costs related to the property at the installation consistent with 10 U.S.C. 2667.

**§ 174.12 Leasing of transferred real property by Federal agencies.**

(a) The Secretary concerned may transfer real property that is still needed by a Federal agency (which for purposes of this section includes DoD Components) to an LRA provided the LRA agrees to lease the property to the Federal agency in accordance with all statutory and regulatory guidance. (This leasing arrangement was referred to as a "leaseback" in previous versions of this part.)

(b) The decision whether to transfer property pursuant to such a leasing arrangement rests with the Secretary concerned. However, a Secretary shall only transfer property subject to such a leasing arrangement if the Federal agency that needs the property agrees to the leasing arrangement.

(c) If the subject property cannot be transferred pursuant to such a leasing arrangement (e.g., the relevant Federal agency prefers ownership, the LRA and the Federal agency cannot agree on terms of the lease, or the Secretary concerned determines that such a lease would not be in the Federal interest), such property shall remain in Federal ownership unless and until the Secretary concerned determines that it is surplus.

(d) If a building or structure is proposed for transfer pursuant to this section, that which is leased by the Federal agency may be all or a portion of that building or structure.

(e) Transfers pursuant to this section must be to an LRA.

(f) Either existing Federal tenants or Federal agencies desiring to locate onto the property after operational closure may make use of such a leasing arrangement. The Secretary concerned may not enter into such a leasing arrangement unless:

(1) In the case of a Defense Agency, the Secretary concerned is acting in an Executive Agent capacity on behalf of the Agency that certifies that such a leasing arrangement is in the interest of that Agency; or,

(2) In the case of a Military Department, the Secretary concerned certifies that such a leasing arrangement 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.

(g) Property eligible for such a leasing arrangement is not surplus because it is still needed by the Federal Government. Even though the LRA would not otherwise have to include such property in its redevelopment plan, it should include the property in its redevelopment plan anyway to take into account the planned Federal use of such property.

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

(1) 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 Government. The lease term should be based on the needs of the Federal agency.

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

(3) Notwithstanding paragraph (h)(2) of this section, if the lease involves a substantial portion of the installation, the Secretary concerned may obtain facility services for the leased property and common area maintenance from the LRA or the LRA's assignee as a provision of the lease.

(i) Such services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property.

(ii) Such services and common area maintenance shall not include—

(A) Municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge, including police protection; or

(B) Firefighting or security-guard functions.

(iii) The Federal agency 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 agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.

(4) The lease shall include a provision prohibiting the LRA from transferring fee title 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 agency occupying the leased property.

(5)(i) The lease shall include an option specifying that if the Federal agency 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 agency that needs property for a similar use. ("Similar use" is a use that is comparable to or essentially the same as the use under the original lease, as determined by the Secretary concerned.)

(ii)(A) If the tenant is a DoD Component, before notifying GSA of the availability of the leasehold, it shall determine whether any other DoD Component has a requirement for the leasehold; in doing so, it shall consult with the LRA. If another DoD Component has a requirement for the leasehold, that DoD Component shall be allowed to assume the leasehold for the remainder of its term. If no DoD Component has a requirement for the leasehold, the tenant shall notify GSA in accordance with paragraph (h)(5)(i)(B) of this section.

(B) The Federal tenant shall notify the GSA of the availability of the leasehold. GSA will then decide whether to exercise this option after consulting with the LRA or other property owner. The GSA shall have 60 days from the date of notification in which to identify a Federal agency to serve out the term of the lease and to notify the LRA or other property owner of the new tenant. If the GSA does not notify the LRA or other property owner of a new tenant within such 60 days, the leasehold shall terminate on a date agreed to by the Federal tenant and the LRA or other property owner.

(iii) If the GSA decides not to exercise this option after consulting with the LRA or other property owner, the leasehold shall terminate on a date agreed to by the Federal tenant and the LRA or other property owner.

(6) The terms of the lease shall provide that the Federal agency may repair and improve the property at its expense after consultation with the LRA.

(i) Property subject to such a leasing arrangement shall be conveyed in accordance with the existing EDC procedures. The LRA shall submit the following in addition to the application requirements outlined in § 174.9(e) of this part:

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

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

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

(j) 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 pursuant to this section.

### Subpart E—Personal Property

#### § 174.13 Personal property.

(a) This section outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a community redevelopment plan. Personal property does not include fixtures.

(b) The Secretary concerned, supported by DoD Components with personal property on the installation, will take an inventory of the personal property, including its condition, within 6 months after the date of approval of closure or realignment. This inventory will be limited to the personal property located on the real property to be disposed of by the Military Department. The inventory will be taken in consultation with LRA officials. If there is no LRA, the Secretary concerned shall consult with the local government in whose jurisdiction the installation is wholly located, or a local government agency or a State government agency designated for that purpose by the Governor of the State. Based on these consultations, the installation commander will determine the items or category of items that have the potential to enhance the reuse of the real property.

(c) Except for property subject to the exemptions in subsection (e) of this section, personal property with potential to enhance the reuse of the real property shall remain at an installation being closed or realigned until the earlier of:

(1) one week after the Secretary concerned receives the redevelopment plan;

(2) the date notified by the LRA that there will be no redevelopment plan;

(3) 24 months after the date of approval of the closure or realignment of the installation; or

(4) 90 days before the date of the closure or realignment of the installation.

(d) National Guard property under the control of the United States Property and Fiscal Officer is subject to inventory and may be made available for redevelopment planning purposes.

(e) Personal property may be removed upon approval of the installation commander or higher authority, as prescribed by the Secretary concerned, after the inventory required in paragraph (b) of this section has been sent to the LRA, when:

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

(2) The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, and chemical items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items;

(3) The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary concerned and the LRA);

(4) The property is stored at the installation for purposes of distribution (including spare parts or stock items) or redistribution and sale (DoD excess/surplus personal property). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;

(5) The property meets known requirements of an authorized program of a DoD Component or another Federal agency that would have to purchase similar items, and is the subject of a written request by the head of the DoD Component or other Federal agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. (For purposes of this paragraph, "purchase" means the DoD Component or Federal agency intends to obligate funds in the current quarter or next six fiscal quarters.) The DoD Component or Federal agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;

(6) The property belongs to a nonappropriated fund instrumentality (NAFI) of the Department of Defense; separate arrangements for communities to purchase such property are possible

and may be negotiated with the Secretary concerned;

(7) The property is not owned by the Department of Defense, *i.e.*, it is owned by a Federal agency outside the Department of Defense or by non-Federal persons or entities such as a State, a private corporation, or an individual; or,

(8) The property is needed elsewhere in the national security interest of the United States as determined by the Secretary concerned. This authority may not be re-delegated below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any DoD Component or other Federal agency.

(f) Personal property not subject to the exemptions in subsection (e) of this section may be conveyed to the LRA as part of an EDC for the real property if the Secretary concerned makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan.

(g) Personal property may also be conveyed separately to the LRA under an EDC for personal property. This type of EDC can be made if the Secretary concerned determines that the transfer is necessary for the effective implementation of a redevelopment plan with respect to the installation. Such determination shall be based on the LRA's timely application for the property, which should be submitted to the Secretary upon completion of the redevelopment plan. The application must include the LRA's agreement to accept the personal property after a reasonable period and will otherwise comply with the requirements of sections 174.9 and 174.10 of this part. The transfer will be subject to reasonable limitations and conditions on use.

(h) Personal property that is not needed by a DoD Component or a tenant Federal agency or conveyed to an LRA (or a state or local jurisdiction in lieu of an LRA), or conveyed as related personal property together with the real property, will be transferred to the Defense Reutilization and Marketing Office for disposal in accordance with applicable regulations.

(i) Useful personal property not needed by the Federal Government and not qualifying for transfer to the LRA under an EDC may be donated to the community or LRA through the appropriate State Agency for Surplus Property (SASP) under 41 CFR part 102-37 surplus program guidelines. Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP.

## Subpart F—Maintenance and Repair

### § 174.14 Maintenance and repair.

(a) Facilities and equipment located on installations being closed are often important to the eventual reuse of the installation. This section provides maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates installation redevelopment.

(b) In order to ensure quick reuse, the Secretary concerned, in consultation with the LRA, will establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth in subsection (c) of this section. Where agreement between the Secretary and the LRA cannot be reached, the Secretary will determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

(1) Exceed the standard of maintenance and repair in effect on the date of approval of closure or realignment;

(2) Be less than maintenance and repair required to be consistent with Federal Government standards for excess and surplus properties as provided in the Federal Management Regulations of the GSA;

(3) Be less than the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes; or,

(4) Require any property improvements, including construction, alteration, or demolition, except when the demolition is required for health, safety, or environmental purposes, or is economically justified in lieu of continued maintenance expenditures.

(c) Unless the Secretary concerned determines that it is in the national security interest of the United States, the levels of maintenance and repair specified in paragraph (b) of this section shall not be changed until the earlier of:

(1) One week after the Secretary concerned receives the redevelopment plan;

(2) The date notified by the LRA that there will be no redevelopment plan;

(3) 24 months after the date of approval of the closure or realignment of the installation; or

(4) 90 days before the date of the closure or realignment of the installation.

(d) The Secretary concerned may extend the time period for the initial levels of maintenance and repair for property still under the Secretary's control for an additional period, if the Secretary determines that the LRA is

actively implementing its redevelopment plan, and such levels of maintenance are justified.

(e) Once the time period for the initial or extended levels of maintenance and repair expires, the Secretary concerned will reduce the levels of maintenance and repair to levels consistent with Federal Government standards for excess and surplus properties as provided in the Federal Management Regulations of the GSA, except in the case of facilities still being used to perform a DoD mission.

### Subpart G—Environmental Matters

#### § 174.15 Indemnification under Section 330 of the National Defense Authorization Act for Fiscal Year 1993.

Section 330 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, as amended, provides for indemnification of transferees of closing Department of Defense properties under circumstances specified in that statute. The authority to implement this provision of law has been delegated by the Secretary of Defense to the General Counsel of the Department of Defense; therefore, this provision of law shall only be referred to or recited in any deed, sales agreement, bill of sale, lease, license, easement, right-of-way, or transfer document for real or personal property after obtaining the written concurrence of the Deputy General Counsel (Environment and Installations), Office of the General Counsel, Department of Defense.

#### § 174.16 Decontamination of potentially explosive materials.

The DoD Component conducting restoration shall submit all plans for decontamination of potentially explosive materials to the DoD Explosives Safety Board, in accordance with DoD Directive 6055.9, DoD Explosives Safety Board (DDESB) and DoD Component Explosives Safety Responsibilities, and any implementing standards issued under that Directive, for approval prior to disposing of property, either directly or by transfer to another agency for disposal or reuse.

#### § 174.17 NEPA.

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

Military Department from complying with its own NEPA regulation.

#### § 174.18 Historic preservation.

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

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

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

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

#### PART 175—[REMOVED AND RESERVED]

2. Part 175 is removed and reserved.

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

3. The authority citation for part 176 continues to read as follows:

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

#### § 176.20 [Amended]

4. Section 176.20 (b) is amended by revising “32 CFR part 175” to read “32 CFR part 174”.

Dated: August 4, 2005.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 05-15698 Filed 8-8-05; 8:45 am]

**BILLING CODE 5001-06-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R09-OAR-2005-CA-0002; FRL-7945-1]

### Revision to the California State Implementation Plan, Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing approval of local rules that address the opacity standard; PM-10, CO, and SO<sub>2</sub> emissions from industrial processes; and source tests. We are also proposing the rescission of local rules that concern exemptions from emission standards; analytical methods; and PM-10, CO, and SO<sub>2</sub> emission standards.

**DATES:** Any comments on this proposal must arrive by September 8, 2005.

**ADDRESSES:** Submit comments, identified by docket number R09-OAR-2005-CA-0002, by one of the following methods:

- Agency Web site: <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

- E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
- Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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