32 CFR PART 176

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 176

RIN 0790–AG18]

Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance

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

ACTION: Final rule.

SUMMARY: This rule revises the Department of Defense's (DoD) Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance regulation published on August 8, 1995. It establishes policies and procedures, developed by both DoD and HUD, to take into account Section 2838 of the National Defense Authorization Act for FY96.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Patrick O'Brien, Base Closure and Community Reinvestment Office, Department of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, (703) 604–5844 or Bill Poythress, Base Redevelopment Team, Department of Housing and Urban Development, 75 Spring Street, SW, Atlanta, GA 30303–3388, (404) 331–5001 x2546 (these telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION:

Regulatory History and Background Information

DoD and HUD published interim final rules on August 8, 1995, (60 FR 40277) and August 17, 1995, (60 FR 42972), respectively, implementing the Base Closure Community Redevelopment and Homeless Assistance Act, Public Law 103–421, (the "Redevelopment Act"). Public comments were accepted until October 16, 1995.

On February 10, 1996, the President signed the National Defense Authorization Act for FY96 (Pub.L. 104–106). Section 2838 of that Act amended the Redevelopment Act in the following ways:

- It clarified that the Redevelopment Act applies to both base closure and realignment sites.
- It required HUD, after rejecting an application, to provide information to DoD on the suitability of buildings and property at the base for homeless use and the extent to which the redevelopment plan meets HUD's review criteria.
- It clarified DoD's obligations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) in two important respects. First, it clarified that the Military Department's proposed action must encompass the LRA's redevelopment plan (see subsections 2905(b)(7)(K)(ii) and 2905(b)(7)(L)(iv)(II)). Second, it mandated that the Military Department give deference to the LRA's redevelopment plan in its property disposal decisions. The degree of deference depends, in part, on whether HUD determines that the LRA's redevelopment plan balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic development and other development with the needs of the homeless in such communities (compare subsection 2905(b)(7)(K)(iii) with subsection 2905(b)(7)(L)(iv)(III)).

This final rule addresses both the comments received on the interim final rules during the public comment period, and the amendment to the Redevelopment Act contained in Public Law 104–106. In addition, this rule contains the regulatory requirements under the Redevelopment act for both DoD and HUD. In another issue of the **Federal Register**, HUD will be publishing its final rule at 24 CFR part 586.

Discussion of Public Comments

In response to the August 8, 1995, and August 17, 1995, publications by DoD and HUD, comments were received from six different sources including State and local entities and non-profit organizations. The comments covered nine major areas:

1. Definitions/Terms

Several commented that the definitions in the interim final rules needed to be consistent with the definitions of the same terms in DoD's final rule titled "Revitalizing Base Closure Communities and Community Assistance" (32 CFR parts 174 and 175). Others recommended that the definition of "communities in the vicinity of the installation" be modified to take into consideration the impact the closure will have on a particular locality, based on distance and economics. One entity recommended that the definition of "redevelopment plan" be revised to allow for the creation of specific land use plans.

Response: The definitions in this rule were compared to the definitions in 32 CFR parts 174 and 175 to ensure that, where appropriate, the same definition was used. As a result, the definition of "surplus property" has been revised (§ 176.5). With respect to the meaning of "communities in the vicinity of the installation," this term is defined, consistent with the authorizing statute, as being those political jurisdictions that comprise the LRA, which is the entity responsible for developing or implementing the redevelopment plan for the installation. It is reasonable to expect that the communities that participate in the LRA will be those most directly affected by the installation's redevelopment. In addition, the definition of "redevelopment plan" has been revised to be more responsive to community needs while ensuring that the plan contains the information needed by HUD for its review (§ 176.5).

2. Soliciting/Receiving Notices of Interest

One entity commented that the time period for accepting notices of interest at BRAC '95 sites needed to be modified to require a minimum of 30 days instead of 90 days. Another suggested that homeless providers should be required to demonstrate that they considered properties off base before submitting a notice of interest to the LRA. In addition, one commentor suggested that the rule be changed to make it clear that only organizations in the vicinity of the installation are eligible to submit notice of interest and that LRAs should not be required to solicit notices of interest from commercial, industrial, and residential development groups.

Response: As specified in section 2905(b)(7)(D) of the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, as amended), interested parties must submit notices of interest by the date specified by the LRA in its local newspaper publication. Further, the date specified by the LRA cannot be earlier than 90, or later than 180 days from the date the Military Department makes its surplus determination. Based on the experience of HUD and DoD under the interim rule, there is apparently confusion among local communities on this matter. Pursuant to the authority granted to the Secretary of Defense to extend or postpone certain deadlines, the final rule clearly specifies that the date by which interested parties must submit notices of interest can be no earlier than 90 and not later than 180 days from the date that the LRA makes its local newspaper publication that it is accepting notices of interest. In accordance with § 176.15(b) of this rule, HUD may waive the regulatory

requirement that the minimum 90 days be calculated from the date of the LRA's publication. However, in no event may the date by which parties must submit notices of interest be earlier than 90 days from the date the Military Department makes its surplus determination.

DoD and HUD will not require homeless providers to consider off base property before submitting a notice of interest because such a requirement would be unduly burdensome and would not result in any clearly evident benefit. In response to the other comments, LRAs should be aware that any eligible entity that proposes to assist homeless individuals and families in the communities in the vicinity of the installation may submit a notice of interest. Further, while LRAs are not required to actively solicit notices from commercial, industrial, and residential development groups, they are encouraged to consider such interests in an effort to identify any and all interest in the site.

3. Release of Information Contained in Notices of Interest

Several commented that the prohibition on releasing to the public any information contained in the notices of interest should be limited to information that is proprietary or confidential.

Response: The rule has been revised to mirror the statute by prohibiting the release of information about the capacity of the representative of the homeless to carry out its program, a description of the organization, or its financial plan without the consent of the representative of the homeless, unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located (§ 176.20(c)(2)(i)). The identity of the representative of the homeless, however, may be disclosed.

4. State and Local Screening

Several requested that the requirement for the Military Departments to conduct an "official" State and local public benefit screening be deleted. Some commented that if the requirement is not removed, then the current process should be revised to require Federal sponsoring agencies to notify eligible applicants that any request for property must be *identical* to the uses in the redevelopment plan, or specifically approved by the LRA.

Response: The provisions of the Federal Property and Administrative Services Act (FPASA) require the General Services Administration (GSA) to conduct a State and local public benefit transfer screening for all property that has been declared surplus to the needs of the Federal government. For base closure property, GSA has delegated this responsibility to the Military Departments. The provisions of the Redevelopment Act, as recently amended, do not change this requirement. To ensure consistency with the redevelopment plan to the greatest extent allowable, the rule requires that all requests for property during the Military Department's public benefit screening be consistent with the uses identified in the redevelopment plan. LRAs should note that, at the request of the LRA, the Military Department may conduct the State and local public benefit screening before the submission of the redevelopment plan to DoD and HUD.

5. Application Requirements

One comment asked that the rule clarify that the legally binding agreements are not executed documents. Another asked that the requirement to provide information on the impact that the implemented redevelopment plan would have on the community be removed. Another asked that the provision that allows HUD to require homeless representatives to submit a certification that public services and utilities are adequate for the program, after HUD has twice rejected the LRA's plan, be deleted.

Response: The language on legally binding agreements states that the agreements are "proposed to be entered into" implying that they are not executed documents. These agreements will not be implemented until after the disposal of the property by the Military Department under § 176.45(c). HUD and DoD decided not to remove the requirement to provide information on the impact the implemented redevelopment plan would have on the community because such information is necessary for HUD to complete the required review of the adequacy of the redevelopment plan in balancing homeless and economic development needs. The provision that states HUD may require homeless representatives to submit certification that public services and utilities are adequate has been removed from this rule although it remains in the statute (§ 176.40(a)).

6. Development of the Reuse Plan

One commentor asked that the rule provide some guidelines on how much monetary or material property should be allocated to homeless providers. Others asked for more guidance on how to deal with notices of interest from homeless providers that ask for property as well as funding. Another commentor wanted more guidance on who should take part in the negotiations between the LRA and homeless providers.

Response: The Redevelopment Act empowers local communities by placing responsibility for base reuse planning and decisions on homeless assistance in the hands of the LRA, an entity which represents the political jurisdictions affected by the closure or realignment. As a result, decisions on how much money or property should be allocated to homeless providers, how an LRA should deal with notices of interest that ask for property as well as funding, and who should take part in negotiations have been left to the discretion of the LRA. DoD and HUD urge LRAs to consult with the applicable Military Department during the planning process on the feasibility of implementing the LRA's recommended solutions to address gaps in the Continuum of Care given existing property disposal mechanisms.

7. Public Participation/Review of the Reuse Plan

Several requested that the requirement that the draft application be made available for public review and comment throughout the process be removed, while others asked that the rule require more general public involvement in the process.

Response: DoD and HUD recognize that requiring LRAs to make the draft application available for public review at all times could hinder, rather than help, the process. In addition, an LRA is, by its very nature, a public body that is accountable to the constituency it represents—the communities impacted by the closure or realignment. Taking public views and comments into consideration should be a normal part of the LRA's reuse planning process. Accordingly, the requirement that the draft application be made available for public review and comment throughout the process has been modified to require the application to be made available periodically during the process (§ 176.20(c)(6)). LRAs will still be required to conduct at least one public hearing on the application prior to its submission to HUD and DoD. DoD and HUD continue to strongly support public involvement in the reuse planning process and stress that this modification should not be interpreted as lessening the need for an open, public, participatory process.

8. HUD Review of the Application

Several asked that additional guidance be provided on what criteria

HUD will use to determine "balance" and that HUD's review include sources in addition to the Consolidated Plan. Others asked that HUD's review be revised to reflect the local community's determination of homeless need, existing services, gaps in services, and strategies for accommodation of these needs within the redevelopment plan. Still others felt that HUD's review should be limited to a determination of whether the LRA followed the correct procedures in developing a redevelopment plan. Finally, some asked that the rule stipulate that the redevelopment plan should not be viewed as the comprehensive solution to homelessness in the communities in the vicinity of the installation, but as a way to address a portion of those needs.

Response: The consolidated Plan, or any other existing housing, social service, community, economic, or other development plan adopted by the political jurisdictions in the vicinity of the installation, will continue to be used by HUD to determine if the LRA's redevelopment plan balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless. HUD and DoD agree that using a community-developed assessment, like the Consolidated Plan, as the basis for this review is in keeping with the spirit and intent of the Redevelopment Act—to move decisions on homeless assistance from Washington and the Federal government to the local community. In addition, HUD believes that using an existing plan is preferable to mandating the creation of new documents. Further, to carry out its duty under the Redevelopment Act, HUD must consider factors beyond whether the LRA followed the correct procedures in developing a redevelopment plan. Additional information about HUD's review process is outlined below. It may not be possible, or appropriate, to view the redevelopment plan as a comprehensive solution to homelessness. In response to public comments, the rule has been revised to clarify that the redevelopment plan may meet all or a portion of the needs of the homeless (§ 176.30(b)(2)(i) and § 176.35(b)(4)).

9. Plan Implementation/Property Disposal

One commentor requested that the rule clarify the role the Military Department plays in making a final decision on reuse through a Record of Decision (ROD) and that the LRA should be provided an opportunity to appeal the decision of HUD.

Response: As a result of recent amendments to the Redevelopment Act, a new section clarifying the role of the Military Department has been added at § 176.45(b) of this rule. Because of the role of the Military Department following HUD review and notification, as expressed in § 176.45(b), DoD and HUD believe the need for an appeal process has been overtaken by the amendments.

Extent of Changes to the Rule

DoD and HUD believe that the process created in the interim final rule requires few changes as evidenced by the limited number of comments received on the rule, the ease with which LRAs have been complying with the requirements set out in the rule, and most importantly, by the content of the applications that have been submitted to HUD for approval. The redevelopment plans contained in the applications that have been submitted have, for the most part, balanced the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities in an appropriate manner. As a result, extensive changes based on public comments have not been made. However, changes stemming from the recent amendments to the Redevelopment Act have been incorporated.

HUD's Review Process

Since the publication of the interim final rule, the area that has raised the most questions has been the process HUD uses to review applications. In accordance with the procedures outlined in the Redevelopment Act, the LRA must submit to HUD and DoD an application which includes a copy of the redevelopment plan and a homeless assistance submission. HUD reviews these applications and notifies DoD and the LRA of its findings. The review criteria used by HUD are outlined in § 176.35(b) of this rule.

To help facilitate the completion of approvable applications, HUD works with LRAs, the affected communities, and representatives of the homeless throughout the development of the redevelopment plan and application. HUD is available to provide assistance to LRAs throughout the planning process. Such assistance includes attending LRA workshops held under § 176.20(c)(3) and meeting with LRAs at their request to discuss specific issues.

HUD must receive the LRA's application no later than 270 days from the deadline for receipt of notices of interest. HUD's headquarters Base Redevelopment Team, and the local HUD Field Office will jointly review the applications and approve or disapprove the LRA's submission. This evaluation includes a completeness review to determine if all the required elements have been submitted by the LRA. The HUD Field Office will contact the LRA regarding any elements that were omitted. Next, HUD evaluates if the redevelopment plan balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities in an appropriate manner. Finally, HUD evaluates the legally binding agreements to ensure that the terms and conditions are clearly articulated.

To assist LRAs with completing their applications and to provide more information to interested parties about the Redevelopment Act process including HUD's review process, HUD has developed a publication called the "Guidebook on Military Base Reuse and Homeless Assistance." To obtain a copy write the Department of Housing and Urban Development, Base Redevelopment Team, 75 Spring Street, SW, Atlanta, GA 30303–3388 or call (401) 331–5001 x2546. The Guidebook is also available on the World Wide Web at: http://www.hud.gov/cpd/milbase.

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)

The information collection requirements contained in §§ 176.20 and 176.30 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2506–0154. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection displays a valid control number.

List of Subjects in 32 CFR Part 176

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

Accordingly, 32 CFR part 176 is revised to read as follows:

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

Sec.
176.1 Purpose.
176.5 Definitions.
176.10 Applicability.
176.15 Waivers and extensions of deadlines.
176.20 Overview of the process.
176.25 HUD's negotiations and consultations with the LRA.
176.30 LRA application.
176.35 HUD's review of the application.
176.40 Adverse determinations.
176.45 Disposal of buildings and property.

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

§ 176.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act, as amended (10 U.S.C. 2687 note), which instituted a new community-based process for addressing the needs of the homeless at base closure and realignment sites. In this process, Local Redevelopment Authorities (LRAs) identify interest from homeless providers in installation property and develop a redevelopment plan for the installation that balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities. The Department of Housing and Urban Development (HUD) reviews the LRA's plan to see that an appropriate balance is achieved. This part also implements the process for identifying interest from State and local entities for property under a public benefit transfer. The LRA is responsible for concurrently identifying interest from homeless providers and State and local entities interested in property under a public benefit transfer.

§ 176.5 Definitions.

As used in this part:

CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*).

Communities in the vicinity of the installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation. If no LRA is formed at the local level, and the State is serving in that capacity, the communities in the vicinity of the installation are deemed to be those political jurisdiction(s) (other than the State) in which the installation is located.

Continuum of care system.

(1) A comprehensive homeless assistance system that includes:

(i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;

(ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(iii) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to independent living;

(iv) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and,

(v) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

(2) Supportive services are services that enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to, case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.

Consolidated Plan. The plan prepared in accordance with the requirements of 24 CFR part 91.

Day. One calendar day including weekends and holidays.

DoD. Department of Defense.

HHS. Department of Health and Human Services.

Homeless person.

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or,

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD. Department of Housing and Urban Development.

Installation. A base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD, including any leased facility, that is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100–526). as amended, or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510), as amended (both at 10 U.S.C. 2687, note).

Local redevelopment authority (LRA). Any authority or instrumentality established by State or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

NEPA. National Environmental Policy Act of 1969 (42 U.S.C. 4320).

OEA. Office of Economic Adjustment, Department of Defense.

Private nonprofit organization. An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Public benefit transfer. The transfer of surplus military property for a specified public purpose at up to a 100-percent discount in accordance with 40 U.S.C. 471 *et seq.* or 49 U.S.C. 47151–47153.

Redevelopment plan. A plan that is agreed by the LRA with respect to the installation and provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

Representative(s) of the homeless. A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless.

Substantially equivalent. Property that is functionally suitable to substitute for property referred to in an approved Title V application. For example, if the representative of the homeless had an approved Title V application for a building that would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.

Substantially equivalent funding. Sufficient funding to acquire a substantially equivalent facility.

Surplus property. Any excess property not required for the needs and the discharge of the responsibilities of all Federal Agencies. Authority to make this determination, after screening with all Federal Agencies, rests with the Military Departments.

Title V. Title V of the Steward B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. 11411) as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160).

Urban county. A county within a metropolitan area as defined at 24 CFR 570.3.

§ 176.10 Applicability.

(a) *General.* This part applies to all installations that are approved for closure/realignment by the President and Congress under Pub. L. 101–510 after October 25, 1994.

(b) *Request for inclusion under this process.* This part also applies to installations that were approved for closure/realignment under either Public Law 100–526 or Public Law 101–510 prior to October 25, 1994 and for which an LRA submitted a request for inclusion under this part to DoD by December 24, 1994. A list of such requests was published in the **Federal Register** on May 30, 1995 (60 FR 28089).

(1) For installations with Title V applications pending but not approved before October 25, 1994, the LRA shall consider and specifically address any application for use of buildings and property to assist the homeless that were received by HHS prior to October 25, 1994, and were spending with the Secretary of HHS on that date. These pending requests shall be addressed in the LRA's homeless assistance submission.

(2) For installations with Title V applications approved before October 25, 1994 where there is an approved Title V application, but property has not been assigned or otherwise disposed of by the Military Department, the LRA must ensure that its homeless assistance submission provides the Title V applicant with:

(i) The property requested;

(ii) Properties, on or off the installation, that are substantially equivalent to those requested;

(iii) Sufficient funding to acquire such substantially equivalent properties;

(iv) Services and activities that meet the needs identified in the application; or,

(v) A combination of the properties, funding, and services and activities described in § 176.10(b)(2)(i)–(iv) of this part.

(c) *Revised Title V process.* All other installations approved for closure or realignment under either Public Law 100–526 or Public Law 101–510 prior to October 25, 1994, for which there was no request for consideration under this part, are covered by the process stipulated under Title V. Buildings or property that were transferred or leased for homeless use under Title V prior to October 25, 1994, may not be reconsidered under this part.

§ 176.15 Waivers and extensions of deadlines.

(a) After consultation with the LRA and HUD, and upon a finding that it is in the interest of the communities affected by the closure/realignment of the installation, DoD, through the Director of the Office of Economic Adjustment, may extend or postpone any deadline contained in this part.

(b) Upon completion of a determination and finding of good cause, and except for deadlines and actions required on the part of DoD, HUD may waive any provision of §§ 176.20 through 176.45 of this part in any particular case, subject only to statutory limitations.

§ 176.20 Overview of the process.

(a) *Recognition of the LRA.* As soon as practicable after the list of installations recommended for closure or realignment is approved, DoD, through OEA, will recognize an LRA for the installation. Upon recognition, OEA shall publish the name, address, and point of contact for the LRA in the **Federal Register** and in a newspaper of general circulation in the communities in the vicinity of the installation.

(b) *Responsibilities of the Military Department.* The Military Department shall make installation properties available to other DoD components and Federal agencies in accordance with the procedures set out at 32 CFR part 175. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify HUD and either the LRA or the Chief Executive Officer of the State, as appropriate, and publish a list of surplus property on the installation that will be available for reuse in the **Federal Register** and a newspaper of general circulation in the communities in the vicinity of the installation.

(c) *Responsibilities of the LRA.* The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. The local reuse planning process must begin no later than the date of the Military Department's **Federal Register** publication of available property described at § 176.20(b). For those installations that began the process described in this part prior to August 17, 1995, HUD will, on a case-by-case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the **Federal Register** publication described in § 176.20(b), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from State and local governments, representatives of the homeless, and other interested parties. This publication shall include the name, address, telephone number and the point of contact for the LRA who can provide information on the prescribed form and contents of the notices of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest. LRAs are strongly encouraged to make this publication as soon as possible within the permissible 30 day period in order to expedite the closure process.

(i) In addition, the LRA has the option to conduct an informal solicitation of notices of interest from public and non-profit entities interested in obtaining property via a public benefit transfer other than a homeless assistance conveyance under either 40 U.S.C. 471 *et. seq.* or 49 U.S.C. 47151–47153. As part of such a solicitation, the LRA may wish to request that interested entities submit a description of the proposed use to the LRA and the sponsoring Federal agency.

(ii) For all installations selected for closure or realignment prior to 1995 that elected to proceed under Public Law

103–421, the LRA shall accept notices of interest for not less than 30 days.

(iii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days after the LRA's publication under § 176.20(c)(1).

(2) Prescribe the form and contents of notices of interest.

(i) The LRA may not release to the public any information regarding the capacity of the representative of the homeless to carry out its program, a description of the organization, or its financial plan for implementing the program, without the consent of the representative of the homeless concerned, unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located. The identity of the representative of the homeless may be disclosed.

(ii) The notices of interest from representatives of the homeless must include:

(A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;

(B) A description of the need for the program;

(C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;

(D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;

(E) A description of the financial plan, the organization, and the organizational capacity of the representative of the homeless to carry out the program; and,

(F) An assessment of the time required to start carrying out the program.

(iii) The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities along with a description of the planned use.

(3) In addition to the notice required under § 176.20(c)(1), undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that may be interested in assisting the homeless within the vicinity of the installation.

(i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in § 176.20(c)(3)(ii).

(ii) The LRA, in coordination with the Military Department and HUD, shall conduct at least one workshop where representatives of the homeless have an opportunity to:

(A) Learn about the closure/realignment and disposal process;

(B) Tour the buildings and properties available either on or off the installation;

(C) Learn about the LRA's process and schedule for receiving notices of interest as guided by § 176.20(c)(2); and,

(D) Learn about any known land use constraints affecting the available property and buildings.

(iii) The LRA should meet with representatives of the homeless that express interest in discussing possible uses for these properties to alleviate gaps in the continuum of care.

(4) Consider various properties in response to the notices of interest. The LRA may consider property that is located off the installation.

(5) Develop an application, including the redevelopment plan and homeless assistance submission, explaining how the LRA proposes to address the needs of the homeless. This application shall consider the notices of interest received from State and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under either 40 U.S.C. 471 *et. seq.*, or 49 U.S.C. 47151–47153; representatives of the homeless; commercial, industrial, and residential development interests; and other interests. From the deadline date for receipt of notices of interest described at § 176.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to the appropriate Military Department and HUD. The application requirements are described at § 176.30.

(6) Make the draft application available to the public for review and comment periodically during the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submission to HUD and the appropriate Military Department. A summary of the public comments received during the process of developing the application shall be included in the application when it is submitted.

(d) *Public benefit transfer screening.* The LRA should, while conducting its outreach efforts, work with the Federal agencies that sponsor public benefit transfers under either 40 U.S.C. 471 *et. seq.* or 49 U.S.C. 47151–47153. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. Actual recipients of property are to be determined by sponsoring Federal agency. The Military Departments shall notify sponsoring Federal agencies about property that is available based on the community redevelopment plan and keep the LRA apprised of any expressions of interest. Such expressions of interest are not required to be incorporated into the redevelopment plan, but must be considered.

§ 176.25 HUD's negotiations and consultations with the LRA.

HUD may negotiate and consult with the LRA before and during the course of preparation of the LRA's application and during HUD's review thereof with a view toward avoiding any preliminary determination that the application does not meet any requirement of this part. LRAs are encouraged to contact HUD for a list of persons and organizations that are representatives of the homeless operating in the vicinity of the installation.

§ 176.30 LRA application.

(a) *Redevelopment plan.* A copy of the redevelopment plan shall be part of the application.

(b) *Homeless assistance submission.* This component of the application shall include the following:

(1) Information about homelessness in the communities in the vicinity of the installation.

(i) A list of all the political jurisdictions which comprise the LRA.

(ii) A description of the unmet need in the continuum of care system within each political jurisdiction, which should include information about any gaps that exist in the continuum of care for particular homeless subpopulations. The source for this information shall depend upon the size and nature of the

political jurisdictions(s) that comprise the LRA. LRAs representing:

(A) Political jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Political jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the political jurisdiction it represents.

(C) A political jurisdiction not described by § 176.30(b)(1)(ii)(A) or § 176.30(b)(1)(ii)(B) shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction and a brief inventory of the facilities and services that assist homeless persons and families within the jurisdiction. LRAs that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) Notices of interest proposing assistance to homeless persons and/or families.

(i) A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet a portion or all of the needs of the homeless by addressing the gaps in the continuum of care. The activities need not be limited to expressions of interest in property, but may also include discussions of how economic redevelopment may benefit the homeless;

(ii) A copy of each notice of interest from representatives of the homeless for use of buildings and property and a description of the manner in which the LRA's application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which may include the impact of the program contained in the notice of interest on the community as described in § 176.30(b)(2)(iii); and,

(iii) A description of the impact that the implemented redevelopment plan will have on the community. This shall include information on how the LRA's redevelopment plan might impact the character of existing neighborhoods adjacent to the properties proposed to be used to assist the homeless and should discuss alternative plans. Impact on schools, social services, transportation, infrastructure, and concentration of minorities and/or low income persons shall also be discussed.

(3) Legally binding agreements for buildings, property, funding, and/or services.

(i) A copy of the legally binding agreements that the LRA proposes to enter into with the representative(s) of the homeless selected by the LRA to implement homeless programs that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating alternative arrangements in the event that an environmental analysis conducted under § 176.45(b) indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Where the balance determined in accordance with § 176.30(b)(4) provides for the use of installation property as a homeless assistance facility, legally binding agreements must provide for the reversion or transfer, either to the LRA or to another entity or entities, of the buildings and property in the event they cease to be used for the homeless. In cases where the balance proposed by the LRA does not include the use of buildings or property on the installation, the legally binding agreements need not be tied to the use of specific real property and need not include a reverter clause. Legally binding agreements shall be accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements, when executed, will constitute legal, valid, binding, and enforceable obligations on the parties thereto;

(ii) A description of how buildings, property, funding, and/or services either on or off the installation will be used to fill some of the gaps in the current continuum of care system and an explanation of the suitability of the buildings and property for that use; and,

(iii) Information on the availability of general services such as transportation, police, and fire protection, and a discussion of infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activity at the installation.

(4) An assessment of the balance with economic and other development needs.

(i) An assessment of the manner in which the application balances the expressed needs of the homeless and the needs of the communities comprising the LRA for economic redevelopment and other development; and

(ii) An explanation of how the LRA's application is consistent with the appropriate Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(5) A description of the outreach undertaken by the LRA. The LRA shall explain how the outreach requirements described at § 176.20(c)(1) and § 176.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless the LRA contacted during the outreach process.

(c) *Public comments.* The LRA application shall include the materials described at § 176.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

§ 176.35 HUD's review of the application.

(a) *Timing.* HUD shall complete a review of each application no later than 60 days after its receipt of a completed application.

(b) *Standards of review.* The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether the application:

(1) *Need.* Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities. HUD will take into consideration the size and nature of the installation in reviewing the needs of the homeless population in the communities in the vicinity of the installation.

(2) Impact of notices of interest. Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:

(i) Whether the plan is feasible in light of demands that would be placed on available social services, police and

fire protection, and infrastructure in the community; and,

(ii) Whether the selected notices of interest are consistent with the Consolidated Plan(s) of any other existing housing, social service, community economic, or other development plans adopted by the political jurisdictions in the vicinity of the installation.

(3) Legally binding agreements. Specifies the manner in which the buildings, property, funding, and/or services on or off the installation will be made available for homeless assistance purposes. HUD will review each legally binding agreement to verify that:

(i) They include all the documents legally required to complete the transactions necessary to realize the homeless use(s) described in the application;

(ii) They include all appropriate terms and conditions;

(iii) They address the full range of contingencies including those described at § 176.30(b)(3)(i);

(iv) They stipulate that the buildings, property, funding, and/or services will be made available to the representatives of the homeless in a timely fashion; and,

(v) They are accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements will, when executed, constitute legal, valid, binding, and enforceable obligations on the parties thereto.

(4) *Balance.* Balances in an appropriate manner a portion or all of the needs of the communities in the vicinity or the installation for economic redevelopment and other development with the needs of the homeless in such communities.

(5) *Outreach.* Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation and whether the outreach requirements described at § 176.20(c)(1) and § 176.20(c)(3) have been fulfilled by the LRA.

(c) *Notice of determination.* (1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to § 176.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of § 176.35(b). If the application fails to meet the requirements, HUD will send the LRA:

(i) A summary of the deficiencies in the application;

(ii) An explanation of the determination; and,

(iii) A statement of how the LRA must address the determinations.

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in § 176.20(c)(5), and the State does not accept within 30 days a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at § 176.40.

(d) *Opportunity to cure.* (1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under § 176.35(c)(1) within which to submit to HUD and DoD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination, effective 90 days from the LRA's receipt of the preliminary determination, that the redevelopment plan fails to meet the requirements of § 176.35(b).

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission send written notification of its final determination of whether the application meets the requirements of § 176.35(b) to both DOD and the LRA.

§ 176.40 Adverse determinations.

(a) *Review and consultation.* If the resubmission fails to meet the requirements of § 176.35(b) or if no resubmission is received, HUD will review the original application, including the notices of interest submitted by representatives of the homeless. In addition, in such instances or when no original application has been submitted, HUD:

(1) Shall consult with the representatives of the homeless, if any, for purposes of evaluation the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

(2) May consult with the applicable Military Department regarding the suitability of the buildings and property at the installation for use to assist the homeless; and,

(3) May consult with representatives of the homeless and other parties as necessary.

(b) *Notice of decision.* (1) Within 90 days of receipt of an LRA's revised application which HUD determines does not meet the requirements of § 176.35(b), HUD shall, based upon its reviews and consultations under § 176.40(a):

(i) Notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, and;

(ii) Notify DoD and the LRA of the extent to which the revised redevelopment plan meets the criteria set forth in § 176.35(b).

(2) In the event that an LRA does not submit a revised redevelopment plan under § 176.35(d), HUD shall, based upon its reviews and consultations under § 176.40(a), notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, either

(i) Within 190 days after HUD sends its notice of preliminary adverse determination under § 176.35(c)(1), if an LRA has not submitted a revised redevelopment plan; or

(ii) Within 390 days after the Military Department's Federal Register publication of available property under § 176.20(b), if no redevelopment plan has been received and no extension has been approved.

§ 176.45 Disposal of buildings and property.

(a) *Puglic benefit transfer screening.* Not later than the LRA's submission of its redevelopment plan to DoD and HUD, the Military Development will conduct an official public benefit transfer screening in accordance with the Federal Property Management Regulations (41 CFR 101–47.303–2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent with the uses identified in the redevelopment plan. At the request of the LRA, the Military Department may conduct the official State and local public benefit screening at any time after the publication of available property described at § 176.20(b).

(b) *Environmental analysis.* Prior to disposal of any real property, the Military Department shall, consistent with NEPA and section 2905 of the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. 2687 note), complete an environmental impact analysis of all reasonable disposal alternatives. The Military Department shall consult with the LRA throughout the environmental impact analysis process to ensure both that the LRA is provided the most current environmental information available concerning the installation, and that the Military Department receives the most current information available

concerning the LRA's redevelopment plans for the installation.

(c) *Disposal.* Upon receipt of a notice of approval of an application from HUD under § 176.35(c)(1) or § 176.35(d)(2), DoD shall dispose of buildings and property in accordance with the record of decision or other decision document prepared under § 176.45(b). Disposal of buildings and property to be used as homeless assistance facilities shall be to either the LRA or directly to the representative(s) of the homeless and shall be without consideration. Upon receipt of a notice from HUD under § 176.40(b), DoD will dispose of the buildings and property at the installation in consultation with HUD and the LRA.

(d) *LRA's responsibility.* The LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.

(e) *Reversions to the LRA.* If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. An LRA may not be required to utilize the building or property to assist the homeless.

Dated: June 25, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7-R]

RIN 0790-AG

DoD Freedom of Information Act Program Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This revision provides substantive and administrative changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. 552, as amended by Public Law 104-231. It also provides guidance to the Department of Defense on implementation of this amended law.

EFFECTIVE DATE: May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, 703-697-1171.

SUPPLEMENTARY INFORMATION: On February 19, 1997 (62 FR 7398), the Department of Defense published a proposed rule for comment. DoD received a response from two commentors. Seven of the comments received were accepted and incorporated into this final rule.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 286 is not a significant regulatory action. The 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 a 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 obligations 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 this Executive Order.

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

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

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 Part 286

Freedom of information.

Accordingly, 32 CFR part 286 is revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.

Subpart A—General Provisions

286.1 Purpose and applicability.
286.2 Public information.
286.3 Definitions.
286.4 Policy.

Subpart B—FOIA Reading Rooms

286.7 Requirements.
286.8 Indexes.

Subpart C—Exemptions

286.11 General provisions
286.12 Exemptions.

Subpart D—For Official Use Only

286.15 General provisions.
286.16 Markings.
286.17 Dissemination and transmission.
286.18 Safeguarding FOUO information.
286.19 Termination, disposal and unauthorized disclosure.

Subpart E—Release and Processing Procedures

286.22 General provisions.
286.23 Initial determinations.
286.24 Appeals.
286.25 Judicial actions.

Subpart F—Fee Schedule

286.28 General provisions.
286.29 Collection of fees and fee rates.
286.30 Collection of fees and fee rates for technical data.

Subpart G—Reports

286.33 Reports control.
286.34 Annual report content.

Subpart H—Education and Training

286.37 Responsibility and purpose.
Appendix A to Part 286—Combatant Commands—Processing Procedures for FOIA Appeals
Appendix B to Part 286—Addressing FOIA Requests
Appendix C to Part 286—Other Reason Categories
Appendix D to Part 286—Record of Freedom of Information (FOI) Processing Cost
Appendix E to Part 286—Record of Freedom of Information (FOI) Processing Cost for Technical Data
Appendix F to Part 286—Annual Report Freedom of Information Act
Appendix G to Part 286—DoD Freedom of Information Act Program Components

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* This part provides policies and procedures for the DoD implementation of the Freedom of Information Act (5 U.S.C. 552) and DoD Directive 5400.7,[1] and promotes uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22121.