
Air Force Base Conversion Agency
BRAC 95 Base Conversion Process
Workshop

Laws, Regulations, and Directives
Affecting Base Conversion



Air Force Base Conversion Agency

Laws, Regulations, and Directives Affecting Base Conversion [Block 2]

OBJECTIVES

- Provide attendees with the framework of BRAC, real property, and environmental laws and regulations affecting base conversion

OUTCOME

- Attendees will be informed of the framework of real property and environmental laws that apply to the base conversion process
- Attendees will be familiar with the basic timeline for the base conversion process
- Attendees will be familiar with the general flow of the overall base conversion process, including the major processes and the basic interrelationships among them



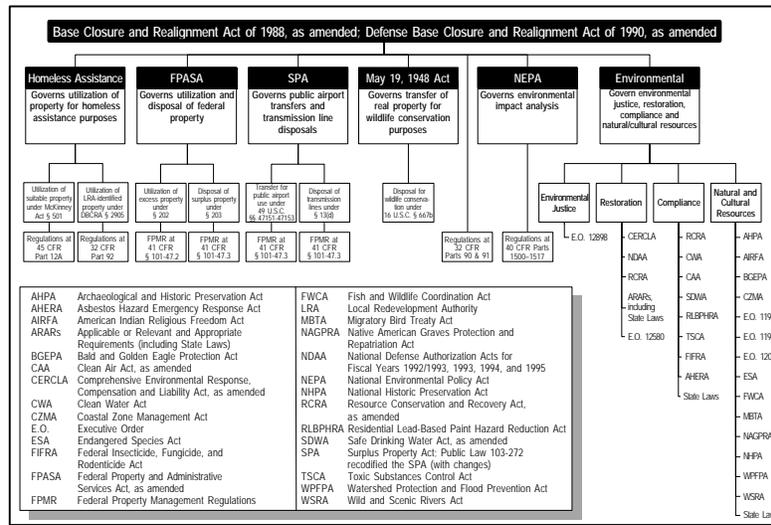
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Quiz—Laws, Regulations, and Directives Affecting Base Conversion

1. Where can you look up the Pryor Amendments? What law did they amend?
2. What regulations implement the provisions of the Surplus Property Act of 1944 and the Federal Property and Administrative Services Act of 1949?
3. Which law governs the disposal of surplus BRAC 95 property for homeless assistance purposes? Where can the implementing regulations be found?
4. Which section of DBCRA 90 most affects the process by which the recommendations of the Commission and the President are implemented?
5. What is the full name of the “Redevelopment Act”?
6. Identify three laws that govern environmental compliance.
7. What do the following acronyms and abbreviations stand for:

a) CERCLA?	e) TSCA?	i) NHPA?
b) RCRA?	f) AIRFA?	j) FPMR?
c) CERFA?	g) CAA?	k) SDWA?
d) CWA?	h) DERP?	l) ESA?
8. Which provision of which environmental law most limits the ability of the Federal government to convey contaminated real property to the private sector?
9. How many laws and regulations potentially affect the base conversion process?

Key Laws and Regulations Affecting Base Conversion

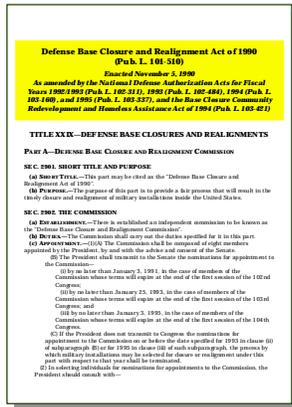


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- The above diagram shows (at the top) the 1988 and 1990 base closure laws, as well as the other primary laws and executive orders either explicitly or implicitly referenced by these statutes
- The current process is conducted under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA 90), as amended by the National Defense Authorization Acts for Fiscal Years 1992/1993, 1993, 1994 (Title XXIX of this act is known as the “Pryor Amendments,” which also included stand-alone provisions not part of the main body of the law), and 1995; and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the “Redevelopment Act”) (the full texts of these laws can be found in Appendix B of the DoD *Base Reuse Implementation Manual*)
- DBCRA 90 requires that utilization of excess property (property not needed by DoD) and disposal of surplus property (property not needed by the Federal government) be governed according to the provisions of other laws: FPASA, SPA, the Stewart B. McKinney Homeless Assistance Act (or Redevelopment Act for BRAC 95 bases), and the May 19, 1948 Act (shown by the first four boxes under the top box).
- Additionally, compliance with NEPA is required (mission relocation actions are exempt) for property disposal and leasing actions, as is compliance with a host of environmental statutes (shown in last two boxes on right)
- Each law has its own unique set of implementing regulations and guidance documents—some laws, e.g., CERCLA require entire bookcases to store the volumes of applicable regulations and guidance
- Highlighted boxes are legal authorities specifically delegated to the Department of Defense by the base closure laws

Reference: See also Appendix A of the DoD *Base Reuse Implementation Manual* for summaries of each of the laws and Executive Orders identified on this figure

Provisions of Defense Base Closure and Realignment Act of 1990, as amended [1]



- **SEC. 2901. Short Title and Purpose**
- **SEC. 2902. The Commission**
- **SEC. 2903. Procedure for Making Recommendations for Base Closures and Realignments**
- **SEC. 2904. Closure and Realignment of Military Installations**
- **SEC. 2905. Implementation**



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Summary Index of 1990 Base Closure Law Provisions (“Where to Look it Up”)

SEC. 2901. Short Title and Purpose—self explanatory

SEC. 2902. The Commission—describes how the Defense Base Closure and Realignment Commission is to form, meet and function

SEC. 2903. Procedure for Making Recommendations for Base Closures and Realignments—includes these provisions:

- (a) Force-Structure Plan
- (b) Selection Criteria
- (c) DoD Recommendations
- (d) Review and Recommendations by the Commission
- (e) Review by the President

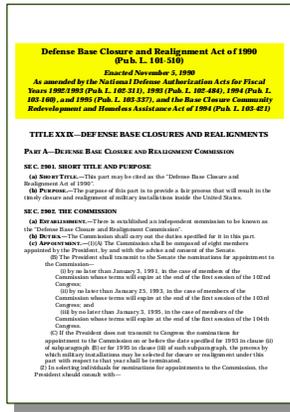
SEC. 2904. Closure and Realignment of Military Installations—including timeframes for initiation and completion of closure and realignment actions

SEC. 2905. Implementation—includes these provisions:

- (a) In General
- (b) Management and Disposal of Property
- (c) Applicability of National Environmental Policy Act of 1969
- (d) Waiver
- (e) Transfer Authority in Connection With Payment of Environmental Remediation Costs
- (f) Transfer Authority in Connection With Construction or Provision of Military Family Housing

Reference: Full text of this law is included in Appendix B, DoD Base Reuse Implementation Manual

Provisions of Defense Base Closure and Realignment Act of 1990, as amended [2]



- **SEC. 2906. Account**
- **SEC. 2907. Reports**
- **SEC. 2908. Congressional Consideration of Commission Report**
- **SEC. 2909. Restriction on Other Base Closure Authority**
- **SEC. 2910. Definitions**
- **SEC. 2911. Clarifying Amendment**



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Summary Index of 1990 Base Closure Law Provisions (“Where to Look it Up”)

SEC. 2906. Account—includes these provisions:

- (a) In General
- (b) Use of Funds
- (c) Reports
- (d) Disposal or Transfer of Commissary Stores and Property Purchased with Nonappropriated Funds
- (e) Account Exclusive Source of Funds for Environmental Restoration Projects

SEC. 2907. Reports—requires submission by Secretary of Defense of a schedule for closure and realignment actions and a description of the installations to which functions are to be transferred (including assessments of the environmental effects of these transfers)

SEC. 2908. Congressional Consideration of Commission Report—includes provisions for Congressional review and disapproval of the Commission’s report

SEC. 2909. Restriction on Other Base Closure Authority—identifies the scope and limitations of this law as the exclusive authority for base closures and realignments through 12/31/95

SEC. 2910. Definitions—includes definitions of the following terms: (1) Account, (2) congressional defense committees, (3) Commission, (4) military installation, (5) realignment, (6) Secretary, (7) United States, (8) date of approval, (9) redevelopment authority, (10) redevelopment plan, (11) representative of the homeless

SEC. 2911. Clarifying Amendment—amends Section 2687(e)(1) of Title 10, United States Code

Reference: Full text of this law is included in Appendix B, DoD Base Reuse Implementation Manual

10 U.S.C. 2667 Military Leasing Authority

- **Provides general authority for leasing of non-excess DoD property**
- **2667(f) authorizes leases of BRAC property**
 - Pending final property disposition
 - To facilitate State/local economic adjustment
 - Rent may be discounted if certain conditions met
 - Services may constitute rent
 - Consultation with EPA on environmental advisability
 - Compliance with National Environmental Policy Act required



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SEC. 2667. LEASES: NON-EXCESS PROPERTY

...

(f)(1) Notwithstanding subsection (a)(3), pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary of the military department concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

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

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4) The Secretary concerned may accept under subsection (b)(5) services of a lessee for an entire installation to be closed or realigned under a base closure law, or for any part of such installation, without regard to the requirement in subsection (b)(5) that a substantial part of the installation be leased.

(5)(A) Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

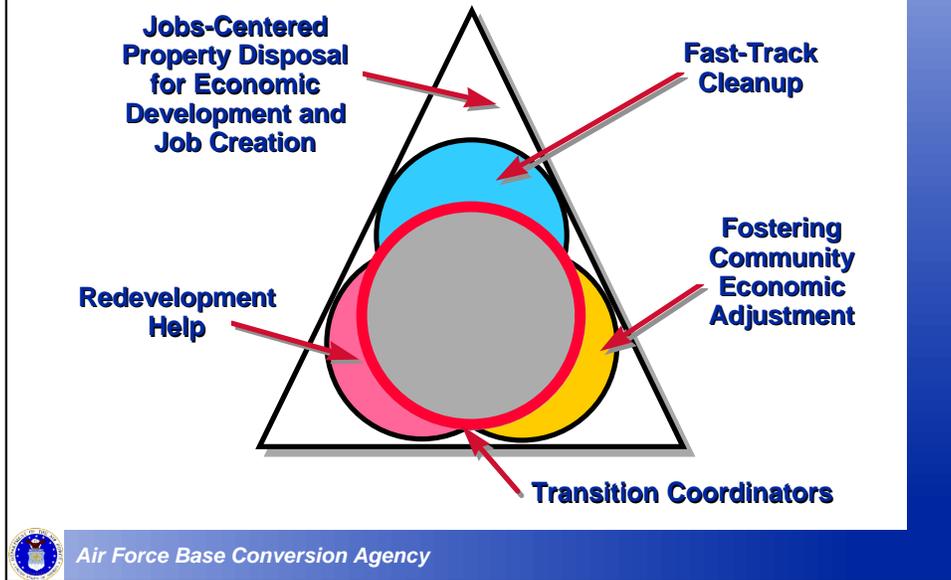
(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would—

(i) significantly affect the quality of the human environment; or

(ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

The President's Plan for Revitalizing Base Closure Communities



President's Plan for Revitalizing Base Closure Communities

- 1) Jobs-centered property disposal that recognizes the importance of local economic redevelopment
- 2) Fast-track environmental cleanup that removes needless delays while protecting human health and safety
- 3) Transition coordinators, to act as ombudsmen and resource persons at closing bases
- 4) Access to transition and redevelopment help for workers and communities
- 5) Larger and faster economic development planning grants

Source: Department of Defense, Annual Report to the President and the Congress, February 1995

Congress and Legislative Changes

■ 1988 and 1990 Base Closure Laws have been amended frequently

- Changes made every year from 1990 through 1996, affecting all aspects of the laws:
 - Base selection and approval process
 - Property disposal
 - Community involvement and assistance
 - Environmental cleanup
- Amendments often coordinated with DoD



■ Major amendments:

- Base Closure Community Assistance Act (1993), “Pryor Amendments”
- Base Closure Community Redevelopment and Homeless Assistance Act (1994)



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- Congress, in cooperation with DoD and in response to comments from constituents, has made frequent efforts to improve the base closure and reuse process. Both the 1988 and 1990 base closure laws have been amended often, primarily through provisions contained in the National Defense Authorization Acts for Fiscal Years 1992/1993, 1993, 1994, 1995, and 1996. In addition, most of these acts contain self-implementing provisions that affect the base closure and reuse process, even though they are not part of the base closure statutes.
- Virtually all aspects of base closure and reuse have been affected by these amendments, but in general the provisions can be classified in four broad categories:
 - The base selection and approval process, including the operations of the Base Closure Commission;
 - The property disposal process;
 - Opportunities and mechanisms for community involvement and assistance in achieving productive reuse; and
 - Environmental remediation responsibilities.
- By far the most comprehensive and far-reaching sets of amendments were contained in Title XXIX of the National Defense Authorization Act for FY 1994 (the Base Closure Community Assistance Act, also known as the “Pryor Amendments”) and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Both of these laws added significant new language to the 1990 base closure law, most of it in the “Implementation” section (section 2905) that addresses the process for working with communities to achieve ultimate disposal of base property.

Provisions of the Base Closure Community Assistance Act (“Pryor”) [1]

Base Closure Community Assistance Act (Pub. L. 103-160, Title XXIX, Subtitle A)

National Defense Authorization Act for Fiscal Year 1994
(Pub. L. 103-160)
Enacted November 30, 1993

TITLE XXIX—DEFENSE BASE CLOSURE AND REALIGNMENT SUBTITLE A—BASE CLOSURE COMMUNITY ASSISTANCE

SEC. 2901. FINDINGS.

Congress makes the following findings:

- (1) The closure and realignment of military installations within the United States is a necessary consequence of the end of the Cold War and of changing United States national security requirements.
- (2) A military installation is a significant source of employment for many communities, and the closure or realignment of an installation may cause economic hardship for such communities.
- (3) It is in the interest of the United States that the Federal Government facilitate the orderly closure or realignment of military installations.
- (4) It is in the interest of the United States that the Federal Government assist communities that experience adverse economic consequences as a result of the closure of military installations by working with such communities to identify and implement means of offsetting or mitigating such consequences in a beneficial manner or of other means for assisting such communities and the residents of such communities.
- (5) The Federal Government may best identify and implement such means by requiring that the head of each department or agency of the Federal Government having jurisdiction over a military installation under the closure of such installation under a base closure law, or the reallocation and redevelopment of such an installation designated for such installation to be closed as included in such department or agency which will provide information and assistance to the communities and the installation designated under section 2915 on the assistance, programs, or other activities of such department or agency with respect to the closure or reallocation and redevelopment of the installation.
- (6) The Federal Government may, also provide such assistance by accelerating involvement of residents of military installations to be closed, and by closing such installations, in a manner that best ensures the beneficial reallocation and redevelopment of such installations by such communities.
- (7) The Federal Government may best assist in such reallocation and redevelopment by making available real and personal property at military installations

- **SEC. 2901. Findings**
- **SEC. 2902. Prohibition on Transfer of Certain Property Located at Military Installations to be Closed**
- **SEC. 2903. Authority to Transfer Property at Closed Installations to Affected Communities and States**
- **SEC. 2904. Expedited Determination of Transferability of Excess Property of Installations to be Closed**
- **SEC. 2905. Availability of Property for Assisting the Homeless**
- **SEC. 2906. Authority to Lease Certain Property at Installations to be Closed**
- **SEC. 2907. Authority to Contract for Certain Services at Installations Being Closed**



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Summary Index of Title XXIX (“Pryor”) Provisions (“Where to Look it Up”)

SEC. 2901. Findings—Finding 5 relates to transition coordinators

SEC. 2902. Prohibition on Transfer of Certain Property Located at Military Installations to be Closed—includes requirements related to personal property and minimum maintenance levels

SEC. 2903. Authority to Transfer Property at Closed Installations to Affected Communities and States—establishes the legal authority governing the transfer of real and personal property at less than fair market value (the basis for economic development conveyances)

SEC. 2904. Expedited Determination of Transferability of Excess Property of Installations to be Closed—provides statutory authority for expediting the Federal screening process

SEC. 2905. Availability of Property for Assisting the Homeless—applicable to BRAC 88, 91, and 93 installations subject to the McKinney Act. Does not apply to BRAC 95 installations

SEC. 2906. Authority to Lease Certain Property at Installations to be Closed—amends § 2667, Title 10, U.S. Code to allow leasing of base closure property at less than fair market rental value, if the Secretary of the Air Force determines that: a public interest will be served as a result of the lease; and the fair market value of the lease is not obtainable, or not compatible with such public benefit

SEC. 2907. Authority to Contract for Certain Services at Installations Being Closed—provides authority for entering into contracts with local governments to provide police and fire protection services, airfield operation services, or other community services

Reference: Full text of this law is included in Appendix B, DoD Base Reuse Implementation Manual

Provisions of the Base Closure Community Assistance Act (“Pryor”) [2]

SEC. 2908. SENSE OF CONGRESS ON AVAILABILITY OF SURPLUS MILITARY EQUIPMENT.

(A) **SENSE OF CONGRESS.**—It is the sense of Congress that the Secretary of Defense take all actions that the Secretary determines practicable to make available the military equipment referred to in subsection (b) to communities suffering significant adverse economic consequences as a result of the closure of military installations.

(B) **Covered Equipment.**—The equipment referred to in subsection (a) is surplus military equipment:

- that is scheduled for retirement or disposal as a result of reductions in the size of the Armed Forces or the closure or realignment of a military installation under a base closure law;
- is important (as determined by the Secretary) in the economic development efforts of the communities referred to in subsection (a); and
- has no other military uses (as so determined).

SEC. 2909. IDENTIFICATION OF UNCONTAMINATED PROPERTY AT INSTALLATIONS TO BE CLOSED.

The identification by the Secretary of Defense required under section 12103(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9603(a)(1)), and the compliance required under section 12103(b)(3) of such Act, shall be made not later than the earlier of:

- the date that is 9 months after the date of the submittal, if any, to the transmitting authority for the submission of a specific use proposal for all or a portion of the real property of the installation; or
- the date specified in section 12103(c)(3) of such Act.

SEC. 2910. COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS RELATING TO CLOSURE OF INSTALLATIONS.

Not later than 12 months after the date of the submittal to the Secretary of Defense of a redevelopment plan for an installation approved for closure under a base closure law, the Secretary of Defense shall, to the extent practicable, complete any environmental impact analyses required with respect to that installation, and with respect to the redevelopment plan, if any, for the installation, pursuant to the base closure law under which the installation is closed, and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 2911. PREFERENCE FOR LOCAL AND SMALL BUSINESSES.

(A) **Preference Requirement.**—In awarding contracts with private entities as part of the closure or realignment of a military installation under a base closure law, the Secretary of Defense shall give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business concerns and small disadvantaged business concerns. Contracts for which this preference shall be given shall include those that result from the award of all instruments of reactivation and mitigation at military installations to be closed or realigned.

(B) **DEFINITIONS.**—In this section:

- The term “small business concern” means a business concern meeting the requirements of section 3 of the Small Business Act (5 U.S.C. 632).
- The term “small disadvantaged business concern” means the business concerns referred to in section 8(a)(2) of such Act (5 U.S.C. 637(a)(2)).
- The term “base closure law” includes section 2087 of title 10, United States Code.

- **SEC. 2908. Authority to Transfer Property at Military Installations to be Closed to Persons Paying the Cost of Environmental Restoration Activities on the Property**
- **SEC. 2909. Sense of Congress on Availability of Surplus Military Equipment**
- **SEC. 2910. Identification of Uncontaminated Property at Installations to be Closed**
- **SEC. 2911. Compliance with Certain Environmental Requirements Relating to Closure of Installations**
- **SEC. 2912. Preference for Local and Small Businesses**



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Summary Index of Title XXIX (“Pryor”) Provisions (“Where to Look it Up”)

- SEC. 2908. Authority to Transfer Property at Military Installation to be Closed to Persons Paying the Cost of Environmental Restoration Activities on the Property**—provides statutory authority for a new property conveyance authority
- SEC. 2909. Sense of Congress on Availability of Surplus Military Equipment**—identifies Congressional desire that the Secretary of Defense should attempt to convey surplus property to affected communities
- SEC. 2910. Identification of Uncontaminated Property at Installations to be Closed**—requires that the CERFA uncontaminated property identification be made not later than the earlier of: 9 months after the date of the submittal, if any to the BTC of a specific use proposed for all or a portion of the installation, or 18 months after the date of approval of closure or realignment
- SEC. 2911. Compliance With Certain Environmental Requirements Relating to Closure of Installations**—provides requirement to complete environmental impact analyses within 12 months after submittal of a redevelopment plan to the Air Force by the local redevelopment authority
- SEC. 2912. Preference for Local and Small Businesses**—requires the Secretary of Defense to give preference to qualified local businesses, to small business concerns, and small disadvantaged business concerns when awarding contracts related to BRAC actions, including environmental restoration

Reference: Full text of this law is included in Appendix B, DoD Base Reuse Implementation Manual

Provisions of the Base Closure Community Assistance Act (“Pryor”) [3]

SEC. 2913. CONSIDERATION OF APPLICATIONS OF AFFECTED STATES AND COMMUNITIES FOR ASSISTANCE.

Section 2913 of title 28, United States Code, is amended by adding at the end the following:

“(a) To the extent practicable, the Secretary of Defense shall inform a State or local government applying for assistance under this subsection of the approval or rejection by the Secretary of the application for such assistance as follows:

(1) Within 30 days of the date of a grant application on the date on which the Secretary receives the application, in the case of an application for a planning grant.

(2) Within the end of the 90-day period beginning on such date, in the case of an application for assistance to carry out a community adjustment and economic redevelopment program.

“(b) In an attempt to complete consideration of application within the time period specified in paragraph (1), the Secretary of Defense shall give priority to those applications requesting assistance for a community described in subsection (2).

“(c) In an application under paragraph (1) approved by the Secretary, the Secretary shall promptly advise the State or local government of the reasons for the rejection of the application.”

SEC. 2914. CLARIFICATION OF UTILIZATION OF FUNDS FOR COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE.

(a) **ELIMINATION OF FUNDS.**—Subject to subsection (b), funds made available to the Economic Development Administration for economic adjustment assistance under section 4303 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 105 Stat. 2728) may be utilized by the administrator for administrative activities in support of the provision of such assistance.

(b) **EXEMPTION.**—Not more than three percent of the funds referred to in subsection (a) may be utilized by the administrator for the administrative activities referred to in such subsection.

SEC. 2915. TRANSITION COORDINATORS FOR ASSISTANCE TO COMMUNITIES AFFECTED BY THE CLOSURE OF INSTALLATIONS.

(a) **In General.**—The Secretary of Defense shall designate a transition coordinator for each military installation to be closed under a base closure law. The transition coordinator shall carry out the activities for such coordinator set forth in subsection (b).

(b) **Functions of Base Closures.**—A transition coordinator shall be designated for an installation under subsection (a) on the following:

(1) Not later than 15 days after the date of approval of closure of the installation.

(2) In the case of installations approved for closure under a base closure law before the date of the enactment of this Act, not later than 25 days after such date of enactment.

(c) **Responsibilities.**—A transition coordinator designated with respect to an installation shall—

(1) review, prior to consultation with officials of Federal and State departments and agencies concerned, the development of strategies for the appropriate environmental assessment of the installation to be closed;

(2) assist the Secretary of the military department concerned in designating real property to be transferred that has the potential for real estate development or redevelopment in accordance with the redevelopment plan for the installation;

(3) assist such Secretary in developing strategies for conducting comprehensive environmental cleanup and restoration of the real property designated under paragraph (b).

- **SEC. 2913. Consideration of Applications of Affected States and Communities for Assistance**
- **SEC. 2914. Clarification of Utilization of Funds for Community Economic Adjustment Assistance**
- **SEC. 2915. Transition Coordinators for Assistance to Communities Affected by the Closure of Installations**
- **SEC. 2916. Sense of Congress on Seminars on Reuse or Redevelopment of Property at Installations to be Closed**
- **SEC. 2917. Feasibility Study On Assisting Local Communities Affected by the Closure or Realignment of Military Installations**
- **SEC. 2918. Definitions**



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Summary Index of Title XXIX (“Pryor”) Provisions (“Where to Look it Up”)

- SEC. 2913. Consideration of Applications of Affected States and Communities for Assistance**—provides for faster processing of planning grant applications
- SEC. 2914. Clarification of Utilization of Funds for Community Economic Adjustment Assistance**—allows the Economic Development Administration to use certain funds for administrative purposes
- SEC. 2915. Transition Coordinators for Assistance to Communities Affected by the Closure of Installations**—identifies the 10 responsibilities of BTCs
- SEC. 2916. Sense of Congress on Seminars on Reuse or Redevelopment of Property at Installations to be Closed**—requests DoD to conduct seminars for affected communities within 6 months of the date of approval of closure; these seminars should include information on Federal programs for the reuse and redevelopment of the installation, including information on employment assistance available to community members
- SEC. 2917. Feasibility Study On Assisting Local Communities Affected by the Closure or Realignment of Military Installations**—required a study on grants to communities to be performed by 3/1/94
- SEC. 2918. Definitions**—includes definitions of the following terms: (1) base closure law, (2) date of approval, (3) redevelopment authority, (4) redevelopment plan

Reference: Full text of this law is included in Appendix B, DoD Base Reuse Implementation Manual

Provisions of the Base Closure Community Redevelopment and Homeless Assistance Act

Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421)

Public Law 103-421
Enacted October 25, 1994

An Act
To revise and improve the process for disposing of buildings and property at military installations under the base closure laws.

Enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.
This Act may be cited as the "Base Closure Community Redevelopment and Homeless Assistance Act of 1994."

SEC. 2. DISPOSAL OF BUILDINGS AND PROPERTY AT MILITARY INSTALLATIONS APPROVED FOR CLOSURE.

(a) **IN GENERAL.**—Section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part 4 of title 38, U.S.C. of Public Law 101-512, 10 U.S.C. 2082) shall be amended—

(1) by redesignating paragraph (7) as paragraph (8), and

(2) by inserting after paragraph (6) the following new paragraph (7):

"(7) Determination of the use to which the buildings, and property located at base closures approved for closure under this part after the date of the enactment of this paragraph shall be determined under this paragraph rather than paragraph (8).

"(8) Not later than the date on which the secretary of Defense certifies the final determination referred to in paragraph (5) relating to the use or transferability of any portion of an installation, the secretary shall—

"(i) identify the buildings and property at the installation for which the Department of Defense has a plan for which another department or agency of the Federal Government has identified a use, or for which another department or agency will accept a transfer;

"(ii) take such actions as are necessary to identify any building or property at the installation not identified under subsection (i); and

"(iii) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation for the chief executive officer

or other property.

"(9) Subject to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation for the chief executive officer

- **SEC. 1. Short Title**
- **SEC. 2. Disposal of Buildings and Property at Military Installations Approved for Closure**
 - (a) **In General**
(Contains process information)
 - (b) **Definition**
 - (c) **Conforming Amendment to 1990 Base Closure Act**
 - (d) **Conforming Amendment to McKinney Act**
 - (e) **Applicability to Installations Approved for Closure Before Enactment of Act**
 - (f) **Clarifying Amendments to Base Closure Acts**



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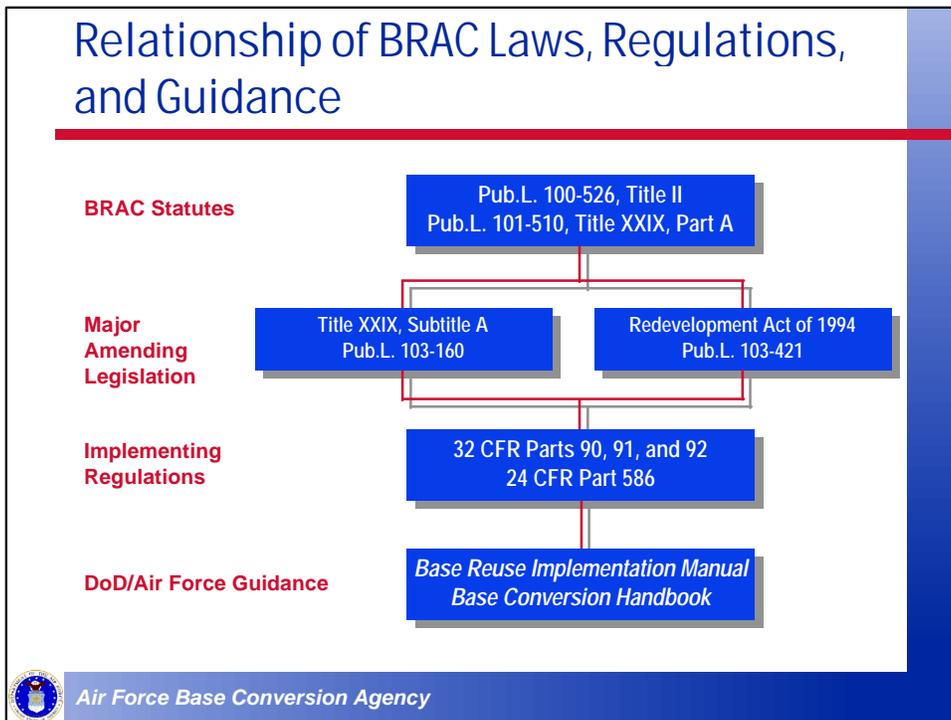
Key Base Closure Community Redevelopment and Homeless Assistance Act (also called the "Redevelopment Act") Provisions ("Where to Look it Up")

- SEC. 2.** Contains amendment to Defense Base Closure and Realignment Act of 1990 (DBCRA 90)
- (a)(2)** Inserts new paragraph 7 into Section 2905(b) of DBCRA 90. Defines requirements for:
- Identification of Local Redevelopment Authority (LRA), if formed
 - Homeless assistance outreach activities by Local Redevelopment Authority
 - State and Local screening for homeless assistance purposes
 - Expressions of interest in property for homeless assistance purposes
 - Public comment on redevelopment plan
 - Preparation of legally binding agreements between LRA and representatives of the homeless
 - Submission (by LRA) of redevelopment plan and homeless assistance application to DoD and HUD
 - Review timelines and review criteria for HUD for homeless assistance submission

Also establishes a separate conveyance authority for homeless assistance purposes.

Reference: Full text of this law and text of DBCRA 90 as amended are included in Appendix B, DoD Base Reuse Implementation Manual. The provisions of the Redevelopment Act, as inserted in DBCRA 90, were further amended by the National Defense Authorization Act for Fiscal Year 1996.

Relationship of BRAC Laws, Regulations, and Guidance



This diagram focuses on only the base closure laws, or BRAC laws (top box). In general, the two BRAC laws have been significantly amended by two other laws:

- The Base Closure Community Assistance Act of 1993, commonly referred to as the “Pryor Amendments” (see *Base Reuse Implementation Manual*, Appendix B, for full text)
- The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (referred to as the “Redevelopment Act”) (see *Base Reuse Implementation Manual*, Appendix B, for full text)

These laws have implementing regulations published at 32 CFR Parts 90, 91 and 92 (see *Base Reuse Implementation Manual*, Appendix C, for complete text) and 24 CFR Part 586. The contents of 24 CFR Part 586 and 32 CFR Part 92 are identical and specifically implement the Redevelopment Act.

[Other laws amending the base closure statutes, e.g., the provisions typically contained in annual Defense authorization legislation are not shown.]

Execution guidance for key aspects of these laws and regulations is found in the *Base Reuse Implementation Manual*.

NOTE: The *Base Reuse Implementation Manual*, including all of the above laws and regulations, is available electronically at <http://www.acq.osd.mil/iai/bccr.html>

Section 2905, DBCRA 90, as amended

SEC. 2905. IMPLEMENTATION

(a) **IN GENERAL.**—(1) In closing or redesigning any military installation under this part, the Secretary may—

(A) take such actions as may be necessary to close or redesign the military installation, including the negotiation of such land, the construction of such replacement facilities, the preservation of such activities, and the transfer of such advance planning and design as may be required to transfer facilities from a military installation being closed or redesigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use for planning and design, water conservation, or operations and maintenance;

(B) provide for personnel adjustment assistance to any community located near a military installation being closed or realigned; and

(C) establish planning assistance to any community located near a military installation in which functions will be transferred as a result of the closure or realignment of a military installation, if the Secretary determines that the financial resources available to the community by grant or otherwise for such purposes are inadequate, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance.

(2) Carry out activities for the closure of environmental facilities and mitigation of any such facilities, and set aside for such purpose funds in the Account or funds appropriated to the Secretary of Defense on October 1, 1991.

(3) Provide employment assistance to civilian employees employed by the Department of Defense at military installations being closed or redesigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for employment assistance to employees; and

(4) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

(b) **MANAGEMENT AND DISPOSAL OF PROPERTY.**—(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part—

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484);

(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code; and

(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

(2)(A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary may, with the concurrence of the Administrator of General Services—

(i) issue general policies and methods for utilizing excess and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

- SEC. 2901. Short Title and Purpose
- SEC. 2902. The Commission
- SEC. 2903. Procedure for Making Recommendations for Base Closures and Realignments
- SEC. 2904. Closure and Realignment of Military Installations
- SEC. 2905. Implementation [defines certain aspects and requirements of reuse process]
- SEC. 2906. Account
- SEC. 2907. Reports
- SEC. 2908. Congressional Consideration of Commission Report
- SEC. 2909. Restriction on Other Base Closure Authority
- SEC. 2910. Definitions
- SEC. 2911. Clarifying Amendment



Air Force Base Conversion Agency

Excerpt of Section 2905(b), Defense Base Closure and Realignment Act of 1990, as amended (“Where to Look it Up”) [Bold Emphasis Added]

SEC. 2905. IMPLEMENTATION

(b) **MANAGEMENT AND DISPOSAL OF PROPERTY.**—(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part—

(A) the authority of the Administrator to utilize excess property under **section 202 of the Federal Property and Administrative Services Act of 1949** (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under **section 203 of that Act** (40 U.S.C. 484);

(C) the authority to dispose of surplus property for public airports under **sections 47151 through 47153 of title 49, United States Code**; and

(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the **Act of May 19, 1948** (16 U.S.C. 667b).

(2)(A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary may, with the concurrence of the Administrator of General Services—

(i) issue general policies and methods for utilizing excess and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

Reference: Full text of this law is included in Appendix B, DoD Base Reuse Implementation Manual

Sections 202 and 203, Federal Property and Administrative Services Act of 1949

■ SECTION 202.—Property Utilization

➤ Governs Federal agency requirements and process for utilizing excess property [40 U.S.C. § 483]

■ SECTION 203.—Disposal of Surplus Property

➤ Governs disposal of surplus Federal property to non-Federal entities [40 U.S.C. § 484]

SEC. 202A. IMPLEMENTATION
40 USC 483.—(1) In carrying out or fulfilling any military installation under this part, the Secretary may—
(A) take such action as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such activities planning and design, as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operations and maintenance;
(B) provide—
(i) necessary adjustment assistance to any community located near a military installation being closed or realigned; and
(ii) necessary planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation, if the Secretary of Defense determines that the transfer of functions is essential to the community; if grants or donations for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance for community planning assistance;
(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account; and
(D) provide employment assistance to civilian employees employed by the Department of Defense at military installations being closed, realigned, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for adjustment assistance to employees; and
(E) determine what Federal agencies for certain purposes.
Secretary with respect to any such closure or realignment, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for such purposes.
(2) In carrying out any closure or realignment under this section, the Secretary shall ensure that environmental restoration of any property under the Department of Defense as a result of such closure or realignment is carried out as promptly as practicable and in accordance with the requirements of this section.
(4) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator shall designate to the Secretary of Defense, with respect to any surplus real property, facility, and personal property located at a military installation, the Federal agency to which such property shall be transferred.
(2) In the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483).
(3) In the authority of the Administrator to dispose of surplus property under section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484).
(4) In the authority of the Administrator to grant requests and make determinations under section 1336 of the Surplus Property Act of 1944 (40 U.S.C. 4832(a)) and
(5) In the authority of the Administrator to determine the availability of excess or surplus real property for public conversion purposes in accordance with the Act of May 19, 1948 (40 U.S.C. 6076).

Implemented under Federal Property Management Regulations (FPMRs)



Air Force Base Conversion Agency

Contents Summary, Federal Property Management Regulations

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

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101-47.310 Disposal of structures and improvements on Government-owned land.

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101-47.600 Scope of subpart.

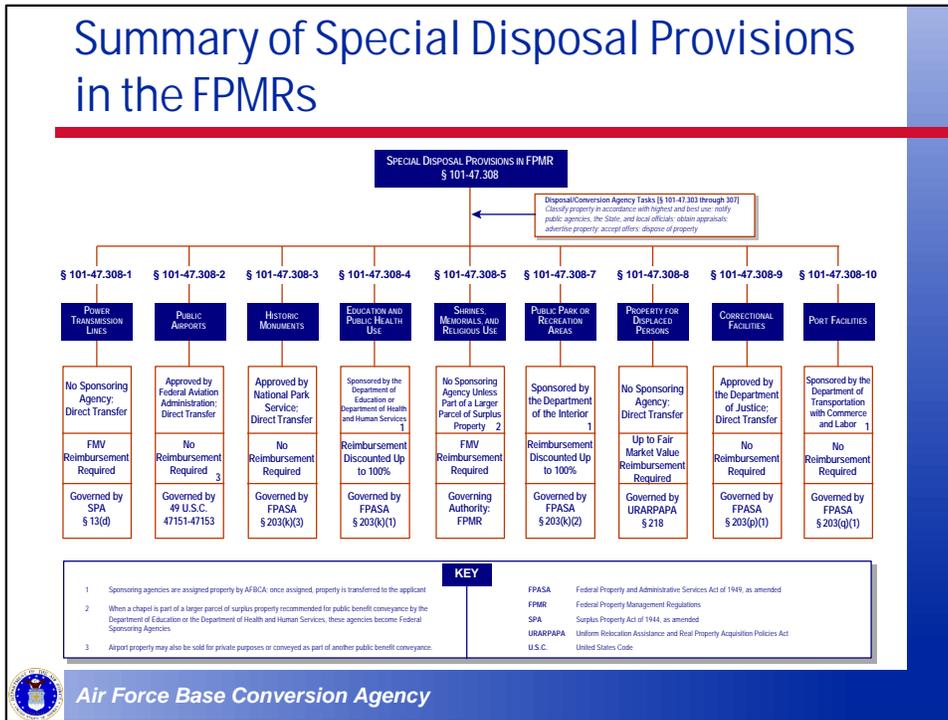
101-47.601 Delegation to Department of Defense.

101-47.602 Delegation to the Department of Agriculture.

101-47.603 Delegations to the Secretary of the Interior.

101-47.604 Delegation to the Department of the Interior, the Department of Health and Human Services, and the Department of Education.

Summary of Special Disposal Provisions in the FPMRs



Sec. 101-47.308 Special disposal provisions.

Sec. 101-47.308-1 Power transmission lines.

(a) Pursuant and subject to the provisions of section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d)), which is continued in effect by section 602(a) of the Federal Property and Administrative Services Act of 1949, any State or political subdivision thereof, or any State or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needful for or adaptable to the requirements of a public or cooperative power project. Disposal agencies shall notify such State entities and Government agencies of the availability of such property in accordance with Sec. 101-47.303-2.

(b) Notwithstanding any other provisions of this subpart, whenever a State or political subdivision thereof, or a State or Government agency or instrumentality certifies that such property is needful for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at the fair market value thereof.

(c) In the event a sale cannot be accomplished by reason of the price to be charged or otherwise and the certification is not withdrawn, the disposal agency shall report the facts involved to the Administrator of General Services, for a determination by him as to the further action to be taken to dispose of the property.

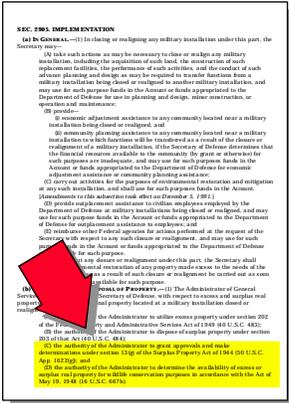
(d) Any power transmission line and right-of-way not disposed of pursuant to the provisions of this section shall be disposed of in accordance with other applicable provisions of this subpart, including, if appropriate, reclassification by the disposal agency.

Sec. 101-47.308-2 Property for public airports.

(a) Pursuant and subject to the provisions of section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151), airport property may be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport. Airport property is any surplus real property including improvements and personal property located thereon as a part of the operating unit (exclusive of property the highest and best use of which is determined by the Administrator of General Services to be industrial and which shall be so classified for disposal without regard to the provisions of this section) which, in the determination of the Administrator of the Federal Aviation Administration (FAA) is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101), or reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from nonaviation businesses at a public airport.

Excerpted from Federal Property Management Regulations, 41 CFR Part 101-47

Section 13(g), Surplus Property Act of 1944/ Act of May 19, 1948



■ Surplus Property Act

- Governs use of surplus Federal property for public airport purposes [49 U.S.C. §§ 47151–47153]

■ Act of May 19, 1948

- Provides for transfer of surplus Federal property to State agencies for wildlife conservation purposes, with restrictions
- Provides for transfer of excess Federal property to DOI for national migratory bird management purposes [16 U.S.C. § 667b]



Air Force Base Conversion Agency

Surplus Property Act of 1944 (recodified at 49 U.S.C. §§ 47151–47153)

Sec. 47151. Authority to transfer interest in surplus property.

(a) General Authority.—Subject to sections 47152 and 47153 of this title, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may give a State, political subdivision of a State, or tax-supported organization any interest in surplus property—

- (1) that the Secretary of Transportation decides is—
 - (A) desirable for developing, improving, operating, or maintaining a public airport
 - (B) reasonably necessary to fulfill the immediate and foreseeable future requirements for developing, improving, operating, or maintaining a public airport; or
 - (C) needed for developing sources of revenue from non-aviation businesses at a public airport; and
- (2) if the Administrator of General Services approves the gift and decides the interest is not best suited for industrial use.

Sec. 47152. Terms of gifts (not reproduced here)

Sec. 47153. Waiving and adding terms (not reproduced here)

Act of May 19, 1948 (62 Stat. 240, as amended 16 U.S.C. § 667b)

Sec. 1. Upon request, real property which is under the jurisdiction or control of a Federal agency and no longer required by such agency, (1) can be utilized for wildlife conservation purposes by the agency of the State exercising administration over the wildlife resources of the State wherein the real property lies or by the Secretary of the Interior; and (2) is valuable for use for any such purpose, and which, in the determination of the Administrator of General Services, is available for such use may...be transferred without reimbursement or transfer of funds...by the Federal agency having jurisdiction or control over the property to (a) such State agency if the management thereof for the conservation of wildlife relates to other than migratory birds, or (b) to the Secretary of the Interior if the real property has particular value in carrying out the national migratory bird management program. Any such transfer to other than the United States shall be subject to the reservation by the United States of all oil, gas, and mineral rights, and to the condition that the property shall continue to be used for wildlife conservation purposes and in the event it is no longer used for such purposes or in the event it is needed for national defense purposes title thereto shall revert to the United States.

Reference: Appendix A, DoD Base Reuse Implementation Manual

National Environmental Policy Act (NEPA)

- Provides a process to help Federal officials make decisions that are based on an understanding of environmental consequences

- Regulations:

- Council on Environmental Quality [40 CFR Parts 1500-1508]
- DoD [32 CFR Part 214]
- Air Force [AF Instruction 32-7061, 32 CFR Part 989]



Air Force Base Conversion Agency

Applicability of National Environmental Policy Act under DBCRA 1990 and Title XXIX

DBCRA 90:

SEC. 2905. IMPLEMENTATION.

(c) **APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.**—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the Air Forces concerned shall not have to consider—

- (i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;
- (ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or
- (iii) military installations alternative to those recommended or selected.

(3) A civil action for judicial review, to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

(d) **WAIVER.**—The Secretary of Defense may close or realign military installations under this part without regard to—

- (1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and
- (2) sections 2662 and 2687 of title 10, United States Code.

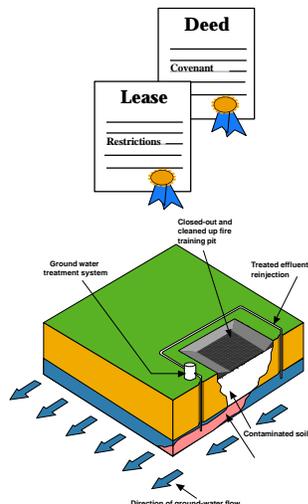
Title XXIX:

SEC. 2911. COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS RELATING TO CLOSURE OF INSTALLATIONS.

Not later than 12 months after the date of the submittal to the Secretary of Defense of a redevelopment plan for an installation approved for closure under a base closure law, the Secretary of Defense shall, to the extent practicable, complete any environmental impact analyses required with respect to the installation, and with respect to the redevelopment plan, if any, for the installation, pursuant to the base closure law under which the installation is closed, and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Reference: Complete text of these laws is found in Appendix B, DoD Base Reuse Implementation Manual

Comprehensive Environmental Response, Compensation and Liability Act, as amended



- Defines requirements for environmental cleanup and close-out actions
- “NPL” vs. “Non-NPL”
- Defines requirements for property transfers, including notifications and covenants
- Defines requirements for early identification of uncontaminated property (“CERFA”)

 Air Force Base Conversion Agency

CERCLA § 120 Overview

(Excerpted from: Appendix A, BRAC Cleanup Plan Guidebook)

Compliance with CERCLA § 120 is required for all BRAC installations. CERCLA defines roles for the Environmental Protection Agency (EPA), appropriate State agencies, and the Air Force

To comply with CERCLA § 120, the EPA must do (but is not limited to) the following:

- Take steps to ensure that preliminary assessments (PAs) are conducted at each installation on the Federal Agency Hazardous Waste Compliance Docket (hereinafter referred to as “docket”) [CERCLA § 120(d)]
- Evaluate each installation for inclusion on the National Priorities List (NPL) in accordance with the National Contingency Plan (NCP), using the criteria established in Appendix A of the NCP, referred to as the Hazard Ranking System (HRS) [CERCLA § 120(d)]
- Include any installation on the NPL if its HRS score is greater than or equal to 28.5 [CERCLA § 120(d)]

To comply with CERCLA §120, the Air Force must do the following:

- Commence a remedial investigation (RI) and feasibility study (FS) for each site on the NPL within six months of final NPL listing [CERCLA § 120(e)(1)]
- Enter into an interagency agreement with the EPA at each NPL installation, the agreement may also include appropriate State agencies, in order to establish the legal and administrative framework for environmental response actions [CERCLA § 120(e)(2)]
- Commence substantial continuous physical on-site remedial action within 15 months of completing any NPL-required RI/FS [CERCLA § 120(e)(3)] (Note: this is the final RI/FS for a site). For the purposes of this section, completion of an RI/FS is determined to coincide with the ROD signature.
- Comply with specified requirements governing the sale or other transfer of real property on which hazardous substances were stored for one year or more, or released or disposed of [CERCLA § 120(h)]. This includes requirements under the Community Environmental Response Facilitation Act (CERFA) for the identification of uncontaminated property [CERCLA § 120(h)(4)]

NPL listing of a BRAC installation directly invokes remedial requirements of the NCP [40 Code of Federal Regulations (CFR) Part 300]. Non-NPL BRAC installations on the docket may be evaluated for possible inclusion on the NPL, using the HRS. Even if your installation is not included on the NPL, Section 211 of the Superfund Amendments and Reauthorization Act (SARA; 10 U.S.C. § 2701), and E.O. 12580 require that your installation’s BRAC Cleanup Team address all sites in a manner consistent with CERCLA § 120.

CERCLA § 120 (h) (3)

“each deed entered into for the transfer of such property by the United States to any other person or entity shall contain . . . a covenant warranting that—

- (i) all remedial action necessary to protect human health and the environment . . . has been taken before the date of transfer, and***
- (ii) any additional remedial action found to be necessary . . . shall be conducted by the United States.”***



Air Force Base Conversion Agency

CERCLA § 120(h)(3) (42 U.S.C. § 9620(h)(3)):

(3) Contents of certain deeds

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

- (A) to the extent such information is available on the basis of a complete search of agency files—
 - (i) a notice of the type and quantity of such hazardous substances,
 - (ii) notice of the time at which such storage, release, or disposal took place, and
 - (iii) a description of the remedial action taken, if any;
- (B) a covenant warranting that—
 - (i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and
 - (ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and
- (C) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

For purposes of subparagraph (B)(i), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (B) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (B) that has not been taken on the date of the lease.

Indemnification of Property Transferees

■ **Section 330 of the National Defense Authorization Act for FY 1993 (Pub. L. 102-484, as amended) states:**

“... the Secretary of Defense shall ... indemnify [persons or entities acquiring ownership or control of any facility] from ... any suit, claim, ... or other fee ... that results from ... the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any [closing] military installation ...”



Air Force Base Conversion Agency

NDA 93 (Pub. L. 102-484), Section 330(a) [as amended by NDA 94 (Pub. L. 103-160), Section 1002]:

SEC. 330. INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY.

(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

(2) The persons and entities described in this paragraph are the following:

(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

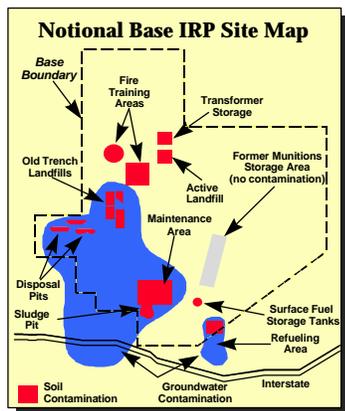
(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

Executive Order 12580 and the Defense Environmental Restoration Program



- Delegates Presidential authority to carry out response actions and cleanups under CERCLA to DoD Components
- Requires development and use of an Administrative Record
- Provides for public review and comment on remedial action plans
- Provides the foundation for the Installation Restoration Program (IRP) and “Fast-track Cleanup” program



Air Force Base Conversion Agency

Executive Order 12580 and the Defense Environmental Restoration Program (Excerpted from: Appendix A, BRAC Cleanup Plan Guidebook)

In addition to CERCLA § 120, the DoD Component must comply with Executive Order 12580 and the Defense Environmental Restoration Program (DERP). Executive Order 12580, signed in January 1987, addresses delegation of duties and powers assigned to the President in CERCLA, and specifically accomplishes the following:

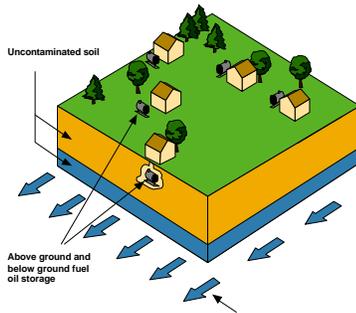
- Delegates to DoD Components substantial authority and responsibility to carry out response actions, including cleanups
- Delegates to DoD Components lead agency authority to select remedial actions consistent with CERCLA § 121
- Requires the development and use of an Administrative Record
- Provides for public review and comment on remedial action plans
- Delegates to DoD Components authority to seek information, entry, inspections, samples, or response actions with the concurrence of the Attorney General
- Provides for CERCLA § 104 removal authority

In accordance with SARA § 211, DERP has three main objectives. As stated, these are as follows:

- (1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.
- (2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.
- (3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

The Installation Restoration Program, IRP, a sub-component of DERP, addresses the first two objectives cited above. The IRP to date has been a CERCLA-based environmental restoration program. To that end, SARA § 211 and Executive Order 12580 require that the IRP be conducted in a manner consistent with CERCLA § 120. DERP requires DoD to proceed expeditiously to remediate environmental contamination from hazardous substances, pollutants, and contaminants due to past practices. This includes accommodating environmental response processes under other Federal and State statutes, as appropriate.

Resource Conservation and Recovery Act, as amended



■ Three principal programs:

- > **Subtitle C:** “Cradle-to-grave” management of hazardous waste, including generation, treatment, storage and disposal (corrective actions)
- > **Subtitle I:** Regulates petroleum products and hazardous substances (including underground storage tanks)
- > **Subtitle D:** Regulates proper disposal of solid waste through State grants (including non-hazardous landfills)



Air Force Base Conversion Agency

Resource Conservation and Recovery Act (RCRA) Response Process (Excerpted from: Appendix A, BRAC Cleanup Plan Guidebook)

All BRAC installations are subject to RCRA, particularly because most generate, transport, store, treat, or have disposed of hazardous waste. **Potential conflicts and overlap with other environmental programs may occur.** This potential was acknowledged in the EPA’s July 1990 RCRA Implementation Study, which concluded as follows:

The [hazardous waste] program has not had time to examine potential regulatory overlaps or inconsistencies with other environmental programs. This type of analysis is inherently difficult, given the different statutory frameworks for the environmental programs.

Given the potential for overlap with programs like CERCLA, it is important to understand the fundamentals of RCRA to ensure that environmental restoration efforts are comprehensive, and distinguished from mission-related and closure-related compliance activities. The overall framework of RCRA can be understood by providing answers to the three questions below:

- What are the goals of RCRA?
- What programs exist under RCRA?
- How do these apply to NPL and non-NPL BRAC installations?

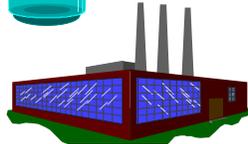
RCRA was passed in 1976 and amended by the Hazardous and Solid Waste Amendments (HSWA) in 1984. Enacted to ensure that solid wastes are managed in an environmentally sound manner, the broad goals of RCRA are as follows:

- Protect human health and the environment
- Reduce waste, and conserve energy and natural resources
- Reduce or eliminate the generation of hazardous waste as expeditiously as possible

To achieve these goals, three distinct yet interrelated programs exist under RCRA. These are:

- **Subtitle C.** A program that established a “cradle-to-grave” management system to regulate hazardous waste from the moment of generation until ultimate disposal; corrective action requirements for all SWMUs at a Treatment, Storage or Disposal (TSD) facility are described in a 27 July 1990 proposed rule in 55 FR 30797
- **Subtitle I.** A program established by HSWA that regulates petroleum products and hazardous substances [as defined in CERCLA § 101(14)] in USTs
- **Subtitle D.** A federal program to regulate proper disposal of solid waste through State grants

Other Environmental Laws



- **Clean Water Act**
- **Clean Air Act**
- **Safe Drinking Water Act**
- **Toxic Substances Control Act**
 - **Asbestos Hazard Emergency Response Act**
- **Federal Insecticide, Fungicide and Rodenticide Act**
- **Residential Lead-Based Paint Hazard Reduction Act**
- **State laws, and other applicable or relevant and appropriate requirements (ARARs) [Cleanup Program]**



Air Force Base Conversion Agency

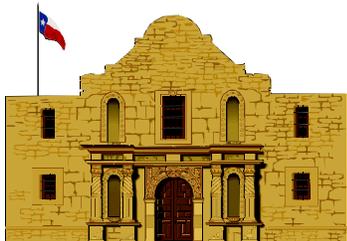
Reference:

See Appendix A, Base Reuse Implementation Manual, Table A-1, for summary of additional environmental and property laws, directives and executive orders that affect base reuse implementation

LAW/REGULATION/AUTHORITY	SUMMARY OF KEY PROVISIONS	RESPONSIBLE AGENCY (REQUIREMENT)
Clean Water Act (CWA) , 33 U.S.C. §§ 1251-1387; 33 CFR Parts 320-330, 335-338; 40 CFR Parts 104-140, 230-233, 401-471; Executive Order 11990 (Protection of Wetlands)	<ul style="list-style-type: none"> • Establishes controls on point source and non-point source discharges to surface waters under the National Pollutant Discharge Elimination System. • Establishes permitting requirements for construction activities in waterways and wetlands 	Army Corps of Engineers/U.S. EPA (permit requirements)
Clean Air Act (CAA) , 42 U.S.C. § 7401 et seq.; 40 CFR Parts 50, 60, 61, and 80	<ul style="list-style-type: none"> • Mandates improvements to air quality through establishment of National Ambient Air Quality Standards; nonattainment requirements; technology and risk standards for air toxics; permit requirements for sources of air emissions; State Implementation Plans for implementing compliance with standards; and conformity determinations for Federal agency actions except base closure final disposals 	U.S. EPA with partial delegation to State agencies (permit requirements)
Safe Drinking Water Act (SDWA) , 42 U.S.C. §§ 300f-300j-26; 40 CFR Parts 141-149	<ul style="list-style-type: none"> • Defines substances for which the U.S. EPA must set drinking water standards • Authorizes establishment of underground injection controls on wells used for waste disposal 	U.S. EPA (permit requirements)
Toxic Substances Control Act (TSCA) , 15 U.S.C. §§ 2601-2671; 40 CFR Parts 700-799	<ul style="list-style-type: none"> • Provides for the specific regulation of PCBs and asbestos • Requires maintenance of an inventory of manufactured chemicals and requires filing of a premanufacture notification for chemicals not in the inventory 	U.S. EPA (permit requirements)
Asbestos Hazard Emergency Response Act (AHERA) , 15 U.S.C. §§ 2641-2655; 40 CFR Part 763	<ul style="list-style-type: none"> • Amends TSCA to govern inspection of asbestos-containing materials in schools and completion of appropriate response and abatement activities 	U.S. EPA (inspection and response)
Lead-Based Paint Poisoning Prevention Act (LBPPPA) , 42 U.S.C. §§ 4801-4846	<ul style="list-style-type: none"> • Requires establishment of procedures for eliminating immediate hazards related to lead-based paint and for notifying purchasers of the presence of lead-based paint • Eliminates use of lead-based paint 	Department of Housing and Urban Development and Department of Health and Human Services (establishment of procedures)
Residential Lead-Based Paint Hazard Reduction Act (RLBPHRA) , Title X of Pub. L. 102-550	<ul style="list-style-type: none"> • Governs transfers of pre-1978 Federal property for residential use • Requires inspection and notification for post-1960 structures and inspection and abatement for pre-1960 housing 	Department of Defense (inspection and notification or abatement)

National Historic Preservation Act

- **Section 106 requires Air Force to “take into account” how undertakings will affect historic properties**
- **Advisory Council on Historic Preservation**
- **Process to be followed outlined in 36 CFR Part 800:**



- > **Identification and evaluation of historic properties**
- > **Assessment of effects**
 - No effect
 - No adverse effect
 - Adverse effect
- > **Consultation**
- > **Council comment**
- > **Agreement on ways to avoid, minimize, or mitigate adverse effects**



Air Force Base Conversion Agency

What does NHPA say?

Section 106 of NHPA requires that the Air Force (and every other Federal agency) “take into account” how each of its undertakings could affect historic properties. An agency must also afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the agency’s project.

The Section 106 Review

Step 1: Identify and evaluate historic properties

Step 2: Assess effects

No effect–Notify State Historic Preservation Officer (SHPO) and document finding

No adverse effect–provide documentation to ACHP (30 days to object)

Adverse effect–Notify ACHP. Begin consultation with SHPO and others about how the adverse effect will be avoided, reduced, mitigated, or accepted in the public interest.

Adverse effects on historic properties include:

1. Physical destruction, damage, or alteration of all or part of property
2. Isolation of property from or alteration of the character of the property’s setting when that character contributes to the property’s qualification for the National Register of Historic Places
3. Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting
4. Neglect of a property resulting in its deterioration or destruction; and
5. Transfer, lease, or sale of the property

Step 3: Consultation with SHPO and others to result in Memorandum of Agreement

Step 4: Council Comment on MOA

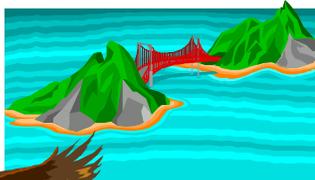
Step 5: Proceed

NEPA compliance does not constitute compliance with Section 106

Reference: Federal Preservation Program Notes: Military Base Realignment and Closure: The Air Force Program. Advisory Council on Historic Preservation. February 11, 1994

Other Key Natural and Cultural Resources Laws

- **American Indian Religious Freedom Act**
- **Archaeological and Historic Preservation Act**
- **Coastal Zone Management Act**
- **Endangered Species Act**
- **Native American Graves Protection and Repatriation Act**
- **Others**



Air Force Base Conversion Agency

Reference:

See Appendix A, Base Reuse Implementation Manual, Table A-1, for summary of additional natural and cultural resources laws, directives and executive orders that affect base reuse implementation

LAW/REGULATION/AUTHORITY	SUMMARY OF KEY PROVISIONS	RESPONSIBLE AGENCY (REQUIREMENT)
American Indian Religious Freedom Act (AIRFA) , 42 U.S.C. § 1996	<ul style="list-style-type: none"> • Protects and preserves religious freedoms of Native Americans, including access to religious sites 	Affected tribes (consultation requirements)
Archaeological and Historic Preservation Act (AHPA) , 16 U.S.C. § 469	<ul style="list-style-type: none"> • Governs activities that may affect historic or archaeological resources • Directs Federal agencies to coordinate with the Department of the Interior 	Department of Interior (notification requirements if jeopardized resources found)
Bald and Golden Eagle Protection Act (BGEPA) , 16 U.S.C. § 668	<ul style="list-style-type: none"> • Governs activities and facilities that may threaten protected birds 	Department of Interior (permit required if golden eagle nest is found)
Coastal Zone Management Act (CZMA) , 16 U.S.C. §§ 1451-1464; 15 CFR Parts 921-933	<ul style="list-style-type: none"> • Encourages States along oceans and Great Lakes to adopt Coastal Zone Management Plans (CZMP), which require any applicant for a Federal permit to certify that its project is consistent with the State CZMP 	Department of Commerce
Endangered Species Act (ESA) , 16 U.S.C. §§ 1531-1544; 50 CFR Parts 17, 401-424, 450-453	<ul style="list-style-type: none"> • Requires protection of threatened or endangered species by prohibiting activities and facilities that would have an adverse effect on them 	U.S. Fish and Wildlife Service (requires biological assessment, mitigation plan if species found)
Fish and Wildlife Coordination Act (FWCA) , 16 U.S.C. §§ 661-666	<ul style="list-style-type: none"> • Requires persons to consult with Federal and State agencies when modifying, controlling, or impounding a surface water body over 4 hectares in size 	U.S. Fish and Wildlife Service
Migratory Bird Treaty Act (MBTA) , 16 U.S.C. §§ 703-712	<ul style="list-style-type: none"> • Governs activities that may affect or threaten migratory birds or their habitats 	Department of Interior (consultation requirements if birds or nests are found)
Native American Graves Protection and Repatriation Act (NAGPRA) , 25 U.S.C. §§ 3001-3013	<ul style="list-style-type: none"> • Governs discovery and handling of Native American human remains and objects 	Department of Interior (notification and consultation)

Applicable Executive Orders

- **E.O.s 11514, 11991** **NEPA implementation**
- **E.O. 11593** **Cultural resources**
- **E.O. 11988** **Floodplains**
- **E.O. 11990** **Wetlands**
- **E.O. 12088** **Pollution control**
- **E.O.s 12372, 12416** **Consultation with State/local governments**
- **E.O. 12580** **CERCLA implementation**
- **E.O. 12788** **Defense Economic Adjustment Program**
- **E.O. 12821** **Donation of education-related equipment**
- **E.O. 12898** **Environmental justice**



Air Force Base Conversion Agency

Reference:

See Appendix A, Base Reuse Implementation Manual, Table A-1, for complete description of Executive Orders that affect base reuse implementation

LAW/REGULATION/AUTHORITY	SUMMARY OF KEY PROVISIONS	RESPONSIBLE AGENCY (REQUIREMENT)
Executive Order 12088	<ul style="list-style-type: none"> • Establishes process for ensuring Federal agency compliance with Federal, State, and local pollution control requirements • Outlines a process for resolution of disputes between the Environmental Protection Agency and Federal agencies, specifying the Office of Management and Budget as dispute resolution agent 	Presidential order involving the Environmental Protection Agency, Department of Defense, State, and Office of Management and Budget
Executive Order 12372 (as amended by Executive Order 12416)	<ul style="list-style-type: none"> • Requires Federal agencies to provide opportunities for consultation by elected officials of State and local governments 	DoD Components in consultation with community
Executive Order 12580	<ul style="list-style-type: none"> • Addresses delegation of certain duties and powers assigned to the President in CERCLA to heads of Federal agencies 	Presidential Order delegating authority to the Secretary of Defense—DoD Components
Executive Order 12788	<ul style="list-style-type: none"> • Creates the Defense Economic Adjustment Program to coordinate economic adjustment assistance for communities affected by Defense downsizing 	Secretary of Defense, Economic Adjustment Committee
Executive Order 12821 , Improving Mathematics and Science Education in Support of the National Education Goals	<ul style="list-style-type: none"> • Gives preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment such as computers 	Military Department (identification and transfer of surplus property)
Executive Order 12898 , Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	<ul style="list-style-type: none"> • Requires the creation of an Interagency Working Group on Environmental Justice to develop guidance for Federal agencies on environmental justice strategies • Requires Federal agencies to include diverse segments of the population in research, data collection, and analysis • Requires Federal agencies to solicit public views and to consider environmental justice values in decision-making 	Department of Defense (guidance) DoD Components (analysis; actions)

Selected DoD Directives

- **DoDD 4140.25** Bulk petroleum management policy
- **DoDD 4150.7** Pest management program
- **DoDD 4165.6** Real property acquisition, mgmt. / disposal
- **DoDD 4165.60** Solid waste management
- **DoDD 4700.4** Natural resources management
- **DoDD 4710.1** Archaeological and historical resources
- **DoDD 4715.1** Environmental Security
- **DoDD 5000.52** Defense Environmental Restoration Program
- **DoDD 5030.41** CERCLA/NCP compliance
- **DoDD 5410.12** Economic adjustment assistance
- **DoDD 6050.1** Environmental effects (in US) of DoD actions



Air Force Base Conversion Agency

*Reference:
See Appendix A, Base Reuse Implementation Manual, Table A-1, for list of DoD Directives that affect base reuse implementation*

LAW/REGULATION/AUTHORITY	DATE	SUMMARY OF KEY PROVISIONS	RESPONSIBLE AGENCY (REQUIREMENT)
DoD Directive 1000.3	29 March 1979	• Safety and Occupational Health Policy for the Department of Defense	Department of Defense
DoD Directive 3030.1	29 November 1978	• Office of Economic Adjustment	Department of Defense
DoD Directive 4140.25	8 January 1993	• DoD Bulk Petroleum Management Policy	Department of Defense
DoD Directive 4150.7	24 October 1983	• DoD Pest Management Program	Department of Defense
DoD Directive 4165.6	1 September 1987	• Real Property Acquisition, Management, and Disposal	Department of Defense
DoD Directive 4165.60	4 October 1976	• Solid Waste Management—Collection, Disposal, Resource Recovery and Recycling Program	Department of Defense
DoD Directive 4210.15	27 July 1989	• Hazardous Material Pollution Prevention	Department of Defense
DoD Directive 4500.34	10 April 1986	• DoD Personal Property Shipment and Storage Program	Department of Defense
DoD Directive 4700.4	24 January 1989	• Natural Resources Management Programs	Department of Defense
DoD Directive 4710.1	21 June 1984	• Archeological and Historic Resources Management	Department of Defense
DoD Directive 5030.41	1 June 1977	• Oil and Hazardous Substances Pollution Prevention and Contingency Program	Department of Defense
DoD Directive 5100.50	24 May 1973	• Protection and Enhancement of Environmental Quality	Department of Defense
DoD Directive 5410.12	22 December 1987	• Economic Adjustment Assistance to Defense-Impacted Communities	Department of Defense
DoD Directive 6050.1	30 July 1979	• Environmental Effects in the United States of DoD Actions	Department of Defense

Selected Air Force Instructions

- **AFI 32-1061—Providing Utilities to US Air Force Installations**
- **AFI 32-7001—Environmental Budgeting**
- **AFI 32-7002—Environmental Information Management System**
- **AFI 32-7020—Environmental Restoration Program**
- **AFI 32-7042—Solid and Hazardous Waste Compliance**
- **AFI 32-7044—Storage Tank Compliance**
- **AFI 32-7045—Environmental Compliance Assessment and Management Program**
- **AFI 32-7061—Environmental Impact Analysis Process**
- **AFI 32-7064—Integrated Natural Resources Management**
- **AFI 32-7065—Cultural Resources Management**
- **AFI 32-9004—Disposal of Real Property**
- **AFI 32-9005—Real Property Accountability and Reporting**



Air Force Base Conversion Agency

32 CFR Parts 90 and 91— Revitalizing Base Closure Communities

- **32 CFR 90: Revitalizing Base Closure Communities**
 - > § 90.1—Purpose
 - > § 90.2—Applicability
 - > § 90.3—Definitions
 - > § 90.4—Policy
 - > § 90.5—Responsibilities
- **32 CFR 91: Revitalizing Base Closure Communities—Base Closure Community Assistance**
 - > § 91.1—Purpose
 - > § 91.2—Applicability
 - > § 91.3—Definitions
 - > § 91.4—Policy
 - > § 91.5—Responsibilities
 - > § 91.6—Delegations of authority
 - > § 91.7—Procedures



Air Force Base Conversion Agency

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 91

RINs 0790-AF61 and 0790-AF62

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Department of Defense, Office of the Assistant Secretary of Defense for Economic Security

ACTION: Final rule.

SUMMARY: This rule amends DoD's Revitalizing Base Closure Communities and Community Assistance regulation, and promulgates guidance required by Title XXIX of the National Defense Authorization Act for Fiscal Year 1994, including those provisions required by Section 2903. This rule also establishes policy and procedures, assigns responsibilities, and delegates authority to implement the President's Program to Revitalize Base Closure Communities, July 2, 1993. This document does not include guidance on acquiring property for the cost of environmental cleanup (Section 2908) or on the substantial changes made in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. The changes stemming from this Act will be made in an accompanying rule, which will be open for public comment and which will be published by the Departments of Defense and Housing and Urban Development.

EFFECTIVE DATE: July 20, 1995

ADDRESSES: Inquiries should be sent to the Office of the Assistant Secretary of Defense for Economic Security, Room 1D760, The Pentagon, Washington, DC 20301-3300; email: base_reuse@acq.osd.mil

FOR FURTHER INFORMATION CONTACT: Robert Hertzfeld, telephone (703) 695-1470; email: hertzfre@acq.osd.mil

Reference: Complete text of the rule is included in Appendix C of the Base Reuse Implementation Manual

32 CFR §91.7—Contents

- § 91.7(a) Identification of interest in real property
- § 91.7(b) Homeless screening for properties not covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994
- § 91.7(c) Reserved
- § 91.7(d) Local Redevelopment Authority and the Redevelopment Plan
- § 91.7(e) Economic Development Conveyances
- § 91.7(f) Consideration for Economic Development Conveyances
- § 91.7(g) Leasing of real property
- § 91.7(h) Personal property
- § 91.7(i) Maintenance, utilities, and services

6 April 1994

25 October 1994

20 July 1995

?? 1996



Air Force Base Conversion Agency

Reference: Complete text of the rule is included in Appendix C of the Base Reuse Implementation Manual

DoD Base Reuse Implementation Manual



- 1 Introduction
- 2 Base Reuse Process Overview
- 3 Identifying Interests in Real Property and Reuse Planning
- 4 Personal Property
- 5 Leasing for Reuse
- 6 Maintenance, Utilities, and Services
- 7 Economic Development Conveyances
- Appendices



Air Force Base Conversion Agency

List of Appendices, Base Reuse Implementation Manual

Appendix A: Laws and Regulations Affecting Base Reuse Implementation

Appendix B: Base Closure and Reuse Laws and Amendments

BASE CLOSURE COMMUNITY ASSISTANCE ACT (PUB. L. 103-160, TITLE XXIX, SUBTITLE A)
BASE CLOSURE COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE ACT OF 1994 (PUB. L. 103-421)
DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF 1990, AS AMENDED

Appendix C: 32 CFR Parts 90 and 91

32 CFR PART 90: REVITALIZING BASE CLOSURE COMMUNITIES
32 CFR PART 91: REVITALIZING BASE CLOSURE COMMUNITIES—BASE CLOSURE COMMUNITY ASSISTANCE

Appendix D: Leasing Materials

MODEL LEASE APPLICATION PACKAGE
GUIDE FOR MILITARY DEPARTMENT INTERNAL REVIEW OF INTERIM LEASE REQUESTS
MODEL LEASE PROVISIONS

Appendix E: Regulations for Real Property Transfers and Public Benefit Conveyances

41 CFR PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY (FEDERAL PROPERTY MANAGEMENT REGULATIONS)
45 CFR PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR PUBLIC HEALTH PURPOSES (DEPARTMENT OF HEALTH AND HUMAN SERVICES)
34 CFR PART 12—DISPOSAL AND UTILIZATION OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES (DEPARTMENT OF EDUCATION)
41 CFR PART 114-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY (DEPARTMENT OF THE INTERIOR)
43 CFR PART 2370—RESTORATIONS AND REVOCATIONS (BUREAU OF LAND MANAGEMENT)
36 CFR PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES (NATIONAL HISTORIC PRESERVATION ACT)
60 FEDERAL REGISTER (FR) 35706—FINAL RULE FOR PUBLIC BENEFIT CONVEYANCES OF PORT FACILITIES

Appendix F: DoD Environmental Policies and Guidance

DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams
DoD Guidance on Accelerating the NEPA Analysis Process for Base Disposal Decisions
DoD Guidance on Improving Public Involvement in Environmental Cleanup at Closing Bases
DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease (FOSL)
DoD Policy on the Implementation of the Community Environmental Response Facilitation Act (CERFA)
DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where Release or Disposal Has Occurred
DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where No Release or Disposal Has Occurred
DOD RESTORATION ADVISORY BOARD (RAB) IMPLEMENTATION GUIDELINES (27 SEPTEMBER 1994)
DOD POLICIES ON ASBESTOS, LEAD-BASED PAINT, AND RADON AT BASE REALIGNMENT AND CLOSURE PROPERTIES

Appendix G: Federal Points of Contact for Base Reuse

32 CFR Part 92—

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

■ **Preamble:**

I —Certification

II —Other Matters

III —Background

- A. Legislative Summary
- B. Circumstances That Led to This New Law
- C. Applicability
- D. Roles of DoD and HUD
- E. HUD's Approach
- F. Eligible Activities

■ **32 CFR 92: Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance**

- > § 92.1— Purpose
- > § 92.5— Definitions
- > § 92.10— Applicability
- > § 92.15— Waivers and extensions of deadlines
- > § 92.20— Overview of the process
- > § 92.25— HUD's negotiations and consultations with the LRA
- > § 92.30— LRA application
- > § 92.35— HUD's review of the application
- > § 92.40— Adverse determinations
- > § 92.45— Disposal of buildings and property



Air Force Base Conversion Agency

Federal Register / Vol. 60 / Tuesday August 8, 1995 / Rules and Regulations 40277

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92--RIN 0790-AG18

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

AGENCY: Office of the Assistant Secretary of Defense for Economic Security, DoD.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule promulgates policies and procedures, developed by both the Departments of Defense and Housing and Urban Development, for implementing the Base Closure Community Redevelopment and Homeless Assistance Act (the "Redevelopment Act"). The Department of Housing and Urban Development will be making a similar publication in 24 CFR Part 586.

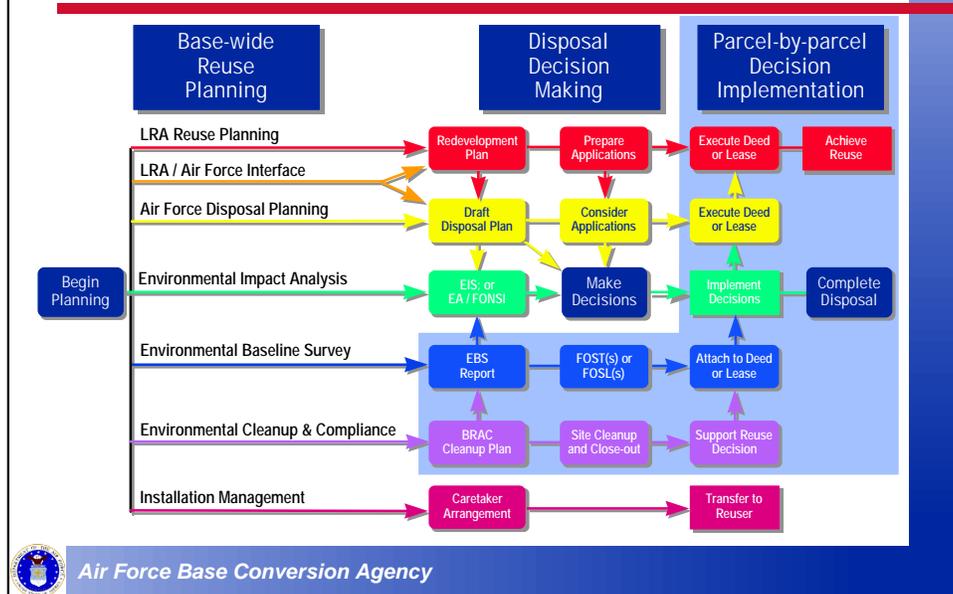
DATES: This part is effective August 8, 1995. Comments must be received by October 10, 1995.

ADDRESSES: Comments must be forwarded to the Office of the Assistant Secretary of Defense (Economic Security), 3300 Defense Pentagon, Room 1D760, Washington, DC 20301-3300. This rule was written jointly by the Department of Defense and the Department of Housing and Urban Development. All public comments will be reviewed by both Departments and subsequent amendments will be drafted together.

FOR FURTHER INFORMATION CONTACT: Robert Hertzfeld, Office of Assistant Secretary of Defense (Economic Security), Department of Defense, 3300 Defense Pentagon, Room 1D-760, Washington, DC 20301-3300, (703) 695-1470 or Thelma Moore, Deputy Assistant Secretary for Planning/Community Viability, Office of Community Planning and Development, Room 7204, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708-2484 or, TDD number for hearing and speech-impaired, (202) 708-0738 (these telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The Redevelopment Act amends the Base Closure and Realignment Act of 1988 and the Defense Base Closure and Realignment Act of 1990, both as amended by the National Defense Authorization Act for Fiscal Year 1994.

Phases of Base Reuse Implementation



Phases of the Base Conversion Process

In order to achieve the optimum reuse potential of every closing or realigning base, it is essential that both Air Force implementors and the LRA understand the basic elements of the entire process. Each action taken in the process should be conducted with the whole process in mind. The base conversion process is affected by a myriad of Federal real property and environmental laws and regulations, along with volumes of implementing guidance. Some of these laws (e.g., The Defense Authorization Amendments and Base Closure and Realignment Act of 1988 and the Defense Base Closure and Realignment Act of 1990) were specifically enacted to govern certain parts of this process. The remainder, however, were enacted to address more routine Government property transactions or highly specific problems such as environmental cleanup. Collectively, they have a great effect on the process.

Phase One: The first phase, base-wide conversion planning consists of the many activities that occur while the LRA prepares the local redevelopment plan and before the Air Force, in its role as the Federal property disposal agent, makes decisions on how the base will be conveyed to end users. These activities include the LRA's redevelopment planning process and the Air Force's required environmental impact analysis activities, natural and cultural resources impact analyses, identification of uncontaminated property, and many environmental cleanup- and compliance-related activities.

Phase Two: The second phase includes activities associated with the Air Force's disposal decision making. This phase may include the issuance of one or more Disposal Record(s) of Decision (RODs), or similar NEPA decision documents. It also includes the approval of applications submitted by the LRA or others for property under various public purpose conveyance authorities (e.g., public airport, economic development, and other public purpose conveyances).

Phase Three: After final disposal decisions have been issued by the Air Force, the last phase, decision implementation occurs for each disposal parcel. This phase lasts until the property has been conveyed and includes environmental activities that must be performed prior to deed transfer.

In order for this complex undertaking to be successfully implemented, teamwork is critical. Individuals from the Air Force, the on-site Operating Location Site Manager and Base Transition Coordinator, the DoD Office of Economic Adjustment (OEA) Project Manager, the Local Redevelopment Authority (LRA), local and State government, and other Federal, State and local conversion planning and implementation organizations will all play key roles. A comprehensive list of available organizations, including individuals to contact, can be found in the Appendix of the *Community Guide to Base Reuse*, published by OEA and the Office of the Assistant Secretary of Defense for Economic Security (OASD(ES)) [Deputy Under Secretary of Defense for Industrial Affairs and Installations (DUSD(IA&I))].

Source: Base Reuse Implementation Manual, Chapter 2

BRAC 95 Activities Subject to Statutorily Imposed Deadlines [1]

- **Closure-related activities**
 - **Initiate closure and realignment activities**
 - **Complete closure and realignment activities**
 - **Withhold relocation of personal property with redevelopment value**
 - **Sustain maintenance at or above minimum levels to support reuse**
- **Community Assistance**
 - **Designate Transition Coordinator**
 - **Hold community seminars on reuse and redevelopment**
 - **Consider applications for OEA assistance**
 - **Identify and obtain regulatory concurrence on uncontaminated property**
 - **Contract with local governments for provision of services**



Air Force Base Conversion Agency

Source:
Table A-3,
Appendix A,
Base Reuse
Implementation
Manual

REQUIREMENTS [SOURCE(S)]	DEADLINE
CLOSURE-RELATED ACTIVITIES	
Initiate Closure and Realignment Activities [DBCRA 90 § 2904(a)]	2 years after Presidential approval for closure July 1997
Complete Closure and Realignment Activities [DBCRA 90 § 2904(a)]	6 years after Presidential approval for closure July 2001
Withhold Relocation of Personal Property with Redevelopment Value Sustain Maintenance at or Above Minimum Levels to Support Reuse [DBCRA 90 § 2905(b), as amended by NDAA 94 § 2902]	Neither relocation of personal property nor reduction of maintenance levels necessary to support reuse is allowed before the earliest of: (1) one week after submittal of redevelopment plan; (2) notice of intent not to submit a redevelopment plan; (3) 90 days before closure (4) 24 months after the date of approval*
COMMUNITY ASSISTANCE	
Designate Transition Coordinator [NDAA 94 § 2915(b)]	15 days after the date of approval*
Hold Community Seminars on Reuse and Redevelopment [NDAA 94 § 2916 (Sense of Congress)]	6 months after the date of approval*
Consider Applications for OEA Assistance [10 U.S.C. § 2391(b), as amended by NDAA 94 § 2913]	Planning Grants: 7 days after application submittal Community Adjustment and Diversification Grants: 30 days after application submittal
Identify and Obtain Regulatory Concurrence on Uncontaminated Parcels [CERCLA § 120(h)(4) and NDAA 94 § 2910]	Earlier of: (1) 9 months after submittal of proposed reuse; (2) 18 months after the date of approval*
Contract with Local Governments for Provision of Community Services [DBCRA 90 § 2905(b), as amended by NDAA 94 § 2907]	No earlier than 180 days before date of closure
PROPERTY INVENTORY, SCREENING, AND TRANSFER	
Inventory Personal Property [DBCRA 90 § 2905(b), as amended by NDAA 94 § 2902]	6 months after the date of approval*
Screen Property for Federal Agency Transfers; Make Excess and Surplus Determinations; Submit Property Information to HUD and LRA and Publish in Federal Register [DBCRA 90 § 2905(b), as amended by NDAA 94 § 2904 and BCCRHA § 2]	6 months after the date of approval*
Receive Notices of Homeless Provider Interest in Property (LRA) [DBCRA 90 § 2905(b), as amended by BCCRHA § 2]	3 to 6 months after property transferability determinations (LRA's discretion)

BRAC 95 Activities Subject to Statutorily Imposed Deadlines [2]

- **Property Inventory, Screening and Transfer**
 - Inventory personal property
 - Screen property for Federal agency transfers
 - Make excess and surplus determinations
 - Submit surplus property information to LRA and HUD and publish in *Federal Register*
 - Receive notices of homeless provider interest in property
 - Complete Redevelopment Plan and submit to DoD and HUD
 - Review Redevelopment Plan and make determination
 - Make homeless assistance property transfer recommendations
 - Consider entering into agreements to transfer property in exchange for cost of environmental restoration
- **Environmental Impact Analysis**
 - Complete environmental impact analysis

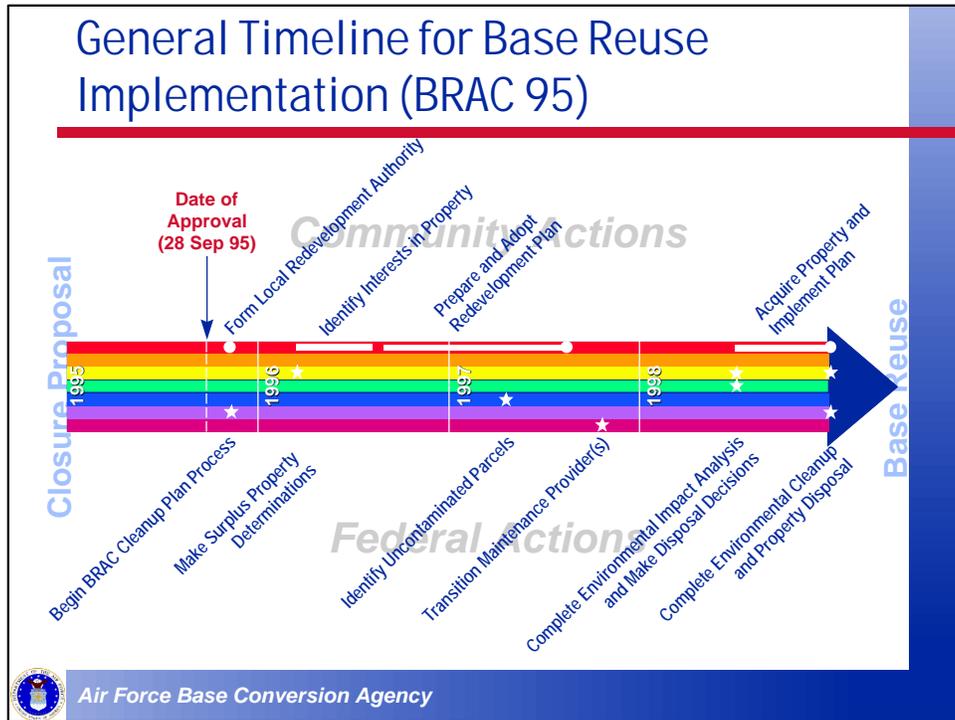


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Source:
Table A-3,
Appendix A,
Base Reuse
Implementation
Manual

REQUIREMENTS [SOURCE(S)]	DEADLINE
PROPERTY INVENTORY, SCREENING, AND TRANSFER	
Complete Redevelopment Plan and Submit to HUD and DoD (LRA) (if homeless uses are included) [DBCRA 90 § 2905(b), as amended by BCCRHA § 2]	9 months after deadline for submission of notices of interest
Review Redevelopment Plan and Make Determination (HUD) [DBCRA 90 § 2905(b), as amended by BCCRHA § 2]	60 days after receipt of redevelopment plan
Revise Redevelopment Plan, if necessary (LRA) [DBCRA 90 § 2905(b), as amended by BCCRHA § 2]	90 days after HUD determination
Review Revised Redevelopment Plan, if necessary (HUD) [DBCRA 90 § 2905(b), as amended by BCCRHA § 2]	30 days after receipt of revised redevelopment plan
Make Homeless Assistance Property Transfer Recommendations, if necessary (HUD) [DBCRA 90 § 2905(b), as amended by BCCRHA § 2]	90 days after receipt of unsatisfactory revised redevelopment plan
Consider Entering into Agreements to Transfer Property by Deed in Exchange for Environmental Restoration [DBCRA 90 § 2905(e), as added by NDAA 94 § 2908]	Must be entered into by the date five years after enactment of NDAA 94 30 November 1998
ENVIRONMENTAL IMPACT ANALYSIS AND ENVIRONMENTAL CLEANUP	
Complete Environmental Impact Statement (EIS) [NDAA 94 § 2911]	12 months after submittal of redevelopment plan
Complete Remedial Investigations/Feasibility Studies (RI/FSs) [CERCLA § 120(e)]	Commence RI/FS within 6 months of final NPL listing <ul style="list-style-type: none"> • Enter into Federal Facility Agreement within 180 days after EPA review of RI/FS • Begin remedial action within 15 months of completion of NPL-required RI/FS

General Timeline for Base Reuse Implementation (BRAC 95)



Community Actions	Federal Actions
Form Local Redevelopment Authority	Begin BRAC Cleanup Plan Process
Identify Interests in Property	Make Surplus Property Determinations
Prepare and Adopt Redevelopment Plan	Identify Uncontaminated Parcels
Acquire Property and Implement Plan	Transition Maintenance Provider(s)
	Complete Environmental Impact Analysis and Make Disposal Decisions
	Complete Environmental Cleanup and Property Disposal

New Legislation: Pub. L. 104-106, 1996 Defense Authorization Act

- **Policy regarding performance of depot-level maintenance and repair for the Department of Defense (§ 311)**
- **Revision of authorities relating to restoration advisory boards (§ 324)**
- **Technical amendments (§§ 1502, 1505)**
- **Deposit of proceeds from leases of property located at installations being closed or realigned (§ 2831)**
- **In-kind consideration for leases at installations to be closed or realigned (§ 2832)**
- **Interim leases of property approved for closure or realignment (§ 2833)**
- **Authority to lease property requiring environmental remediation at installations approved for closure or realignment (§ 2834)**



Air Force Base Conversion Agency

One Hundred Fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday, the fourth day of January, one thousand nine hundred and ninety-five

An Act

To authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

...

- **Policy regarding performance of depot-level maintenance and repair for the Department of Defense (§ 311)**—Requires DoD to develop depot maintenance policy by 31 March 1996; conditionally repeals 60/40 rule; establishes reporting requirements
- **Revision of authorities relating to restoration advisory boards (§ 324)**—Requires promulgation of regulations; specifies conditions for providing grants for technical assistance to RABs
- **Technical amendments (§§ 1502, 1505)**—Correct inaccuracies in base closure law caused by changes in Congressional committee names and by earlier amendments and legislation
- **Deposit of proceeds from leases of property located at installations being closed or realigned (§ 2831)**—Authorizes deposit of lease proceeds into the BRAC account
- **In-kind consideration for leases at installations to be closed or realigned (§ 2832)**—Clarifies authority to accept in-kind consideration for leases
- **Interim leases of property approved for closure or realignment (§ 2833)**—Authorizes granting of interim leases of indeterminate duration
- **Authority to lease property requiring environmental remediation at installations approved for closure or realignment (§ 2834)**—Amends CERCLA § 120(h) to clarify authority to grant leases in furtherance of conveyance

New Legislation: Pub. L. 104-106, 1996 Defense Authorization Act (Concluded)

- **Final funding for Defense Base Closure and Realignment Commission (§ 2835)**
- **Exercise of authority delegated by the Administrator of General Services (§ 2836)**
- **Lease back of property disposed from installations approved for closure or realignment (§ 2837)**
- **Improvement of base closure and realignment process regarding disposal of property [Redevelopment Act refinements] (§ 2838)**
- **Agreements for certain services at installations being closed (§ 2839)**
- **Authority to transfer property at military installations to be closed to persons who construct or provide military family housing (§ 2840)**



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- **Final funding for Defense Base Closure and Realignment Commission (§ 2835)**—Funds Commission activities during October–December 1995
- **Exercise of authority delegated by the Administrator of General Services (§ 2836)**—Makes current Federal Property Management Regulations applicable; expands delegated DoD authority to allow promulgation of general regulations
- **Lease back of property disposed from installations approved for closure or realignment (§ 2837)**—Allows DoD to transfer property to an LRA and then lease the property back at no cost
- **Improvement of base closure and realignment process regarding disposal of property [Redevelopment Act refinements] (§ 2838)**—Revises Redevelopment Act language to clarify roles and responsibilities; advises that eligibility of public-purpose applicants should be determined prior to submission of redevelopment plan; clarifies HUD's review responsibilities and makes DoD solely responsible for NEPA analyses
- **Agreements for certain services at installations being closed (§ 2839)**—Clarifies authority of Military Departments to enter into cooperative agreements with LRAs
- **Authority to transfer property at military installations to be closed to persons who construct or provide military family housing (§ 2840)**—Establishes new conveyance authority that allows Military Departments to enter into agreements to transfer property (on or near a BRAC installation) to parties providing housing units at or near an installation with a shortage of suitable housing; value received by Military Department must be no less than value of property transferred (including supplemental payments as appropriate) and conveyance must be consistent with redevelopment plan

Pending Legislation: H.R. 3230, 1997 Defense Authorization Bill

- **Extension of authority for aviation depots and naval shipyards to engage in defense-related production and services (§ 311)**
- **Clarification of meaning of uncontaminated property for purposes of transfer by the United States (§ 330)**
- **Authority to transfer contaminated Federal property before completion of required response actions (§ 334)**
- **Restoration of authority for certain intragovernment transfers under 1988 base closure law (§ 2811)**
- **Contracting for certain services at facilities remaining on closed installations (§ 2812)**
- **Authority to compensate owners of manufactured housing (§ 2813)**
- **Additional purpose for which adjustment and diversification assistance is authorized (§ 2814)**



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