

entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

#### Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

#### Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of all published notices and all comments received in response to those notices within Docket No. TTB-2010-0003. A direct link to that docket is available on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 105. You may also reach Docket No. TTB-2010-0003 through the Regulations.gov search page at <http://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You and other members of the public may view copies of all published notices, all related petitions, maps and other supporting materials, and all electronic or mailed comments TTB has received or will receive in response to this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

#### Drafting Information

Nancy Sutton and other members of the Regulations and Rulings Division drafted this notice.

Signed: December 10, 2010.

**John J. Manfreda,**

Administrator.

[FR Doc. 2010-31655 Filed 12-16-10; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID DoD-2010-OS-0135]

RIN 0790-AI67

### 32 CFR Part 174

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

**AGENCY:** Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** Economic Development Conveyances were created in amendments to the Base Closure and Realignment law in 1993, creating a new tool for communities experiencing economic dislocation from the closing of a major employer in the community. Congress recognized that the existing authority under the Federal Property and Administrative Services Act of 1949 (as amended and otherwise known as the Real Property Act) was not structured to deal with the unique challenges of assisting community economic recovery and job creation of such large installations, many with decaying or obsolete infrastructure and other redevelopment challenges. Section 2715 of Public Law 111-84 changed the authority of the Department of Defense to convey property to a local redevelopment authority (LRA) for purposes of job generation on a military installation closed or realigned under a base closure law, known as an Economic Development Conveyance (EDC). Under this revised authority, the Department is no longer required to seek to obtain fair market value for an EDC: An EDC may be for consideration at or below the estimated fair market value, including for no consideration. The law also now explicitly provides authority for the Department to be flexible regarding the form of consideration, including the authority to accept consideration in the form of revenue sharing or so-called "back-end" funding. (i.e., "The Secretary may accept, as consideration, a share of the revenues that the redevelopment authority receives from third-party buyers or lessees from sales and long-term leases of the conveyed property, consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate.")

The revised language also provides that the Department's determination of the consideration may account for the

economic conditions of the local affected community and the estimated costs to redevelop the property.

This proposed regulation provides guidance to implement recent changes to the law and makes other improvements that encourage expedited property transfers for job creation that allow for the Department to obtain a share of the revenues obtained.

**DATES:** Written comments received at the address indicated below by February 15, 2011 will be accepted.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Robert Hertzfeld, (703) 604-6020.

**SUPPLEMENTARY INFORMATION:** The proposed rule implements these statutory changes and is also intended to enable the Military Departments to expedite the EDC process. Closed military bases represent a potential engine of economic activity and job creation for former host communities. When disposing of property using this method, the Military Departments should use the full breadth of the EDC authority to structure conveyances that respond to the job creation and redevelopment challenges of the individual community.

The new law no longer requires the Department to seek Fair Market Value. Accordingly, a transfer may be made below estimated fair market value or without consideration if the LRA agrees to reinvest sale or lease proceeds for not less than seven years and to take title to the property within a reasonable timeframe. As such, this regulation deletes the requirement for the Department to obtain an appraisal of the property as part of an EDC conveyance, including analysis of highest and best use, for that purpose. This regulation

places the emphasis of EDCs on the economic redevelopment of the former installation. With this regulation, the Department approaches value by obtaining a share of the revenues obtained from the redevelopment of the property. Experience has shown that estimates of fair market value for property at closing installations, especially those requiring substantial future investment in redevelopment, can vary widely due to the uncertainties inherent in significant long-term redevelopment projects and differences in projected costs and revenues over a potential 20–30 year development cycle that may occur on many large closing installations. Elimination of the requirement to determine estimated fair market value and related appraisal requirements should expedite the conveyance process and remove what has been a common source of conflict and delays between the community and the Department. Accordingly, the proposed rule establishes as DoD policy a requirement that, for every EDC, the LRA must reinvest sale or lease proceeds for not less than seven years and take title to the property within a reasonable timeframe. This makes the determination of fair market value of the property unnecessary for purposes of establishing EDC terms and conditions that comply with statutory requirements. Consequently, it also eliminates the need to establish a process by which the fair market value of property to be conveyed by EDC must be determined. However, the proposed rule does not interfere with the ability of the Secretary concerned to obtain and use any information deemed appropriate, including market analysis, construction estimates, a real estate proforma, and appraisals, to ensure that decisions regarding property disposal are properly informed. If the proposed conveyance does not meet the requirements for an EDC, or if the LRA does not agree to reinvest sale or lease proceeds for not less than seven years and to take title to the property within a reasonable timeframe, the Secretary concerned may pursue a negotiated sale to a public body at fair market value, including a negotiated sale for economic development purposes, under regulations at 41 CFR Part 102–75.880, et seq., or competitive public sale.

This regulation seeks to streamline the process by separating the eligibility criteria for an EDC from the criteria guiding the negotiation of the terms and conditions. It also makes the application more concise and incorporates adjustments to reflect current market conditions and to recognize local

community investment and risk. Finally, this proposed regulation implements the revised EDC authority in a manner intended to clarify and streamline the Economic Development Conveyance process and assist affected communities in job generation.

### Regulatory Procedures

#### *Executive Order 12866, “Regulatory Planning and Review”*

It has been certified that 32 CFR part 174 does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order 12866, as amended by Executive Order 13422.

#### *Section 202, Pub. L. 104–4, “Unfunded Mandates Reform Act”*

It has been certified that 32 CFR part 174 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### *Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)*

It has been certified that 32 CFR part 174 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

#### *Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)*

It has been certified that 32 CFR part 174 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### *Executive Order 13132, “Federalism”*

It has been certified that 32 CFR part 174 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

### List of Subjects in 32 CFR Part 174

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

Accordingly, 32 CFR Part 174 is proposed to be amended as follows:

### PART 174—[AMENDED]

1. The authority citation for Part 174 continues to read as follows:

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

2. Section 174.9 is revised to read as follows:

#### **§ 174.9 Economic development conveyances.**

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

(b) An LRA is the only entity eligible to receive property under an EDC.

(c) A completed application will be used to decide whether the Secretary concerned will enter into an EDC with an LRA. An LRA may submit an EDC application only after it adopts a redevelopment plan. The Secretary concerned shall establish a reasonable time period for submission of an EDC application after consultation with the LRA.

(d) The application shall include:

- (1) A copy of the adopted redevelopment plan.
- (2) A project narrative including the following:
  - (i) A general description of the property requested.
  - (ii) A description of the intended uses.
  - (iii) A description of the economic impact of closure or realignment on the local community.
  - (iv) A description of the economic condition of the community and the prospects for redevelopment of the property.
  - (v) A statement of how the EDC is consistent with the overall redevelopment plan.
- (3) A description of how the EDC will contribute to short- and long-term job generation on the installation, including the projected number and type of new jobs it will assist in generating.
- (4) A business/operational plan for the EDC parcel, including at least the following elements:
  - (i) A development timetable, phasing schedule, and cash flow analysis.

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

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

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

(5) A statement describing why an EDC will more effectively enable achievement of the job generation objectives of the redevelopment plan regarding the parcel requested for conveyance than other federal real property disposal authorities.

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

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

(8) A commitment from the LRA that the proceeds from any sale or lease of the EDC parcel (or any portion thereof) received by the LRA during at least the first seven years after the date of the initial transfer of property, except proceeds that are used to pay consideration to the Secretary concerned under paragraph (h) of this section, shall be used to support economic redevelopment of, or related to, the installation. In the case of phased transfers, the Secretary concerned may also require that this commitment apply during at least the first seven years after the date of every subsequent transfer of property to the LRA. The use of proceeds to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation—

- (i) Road construction;
- (ii) Transportation management facilities;
- (iii) Storm and sanitary sewer construction;
- (iv) Police and fire protection facilities and other public facilities;
- (v) Utility construction;
- (vi) Building rehabilitation;
- (vii) Historic property preservation;
- (viii) Pollution prevention equipment or facilities;
- (ix) Demolition;
- (x) Disposal of hazardous materials generated by demolition;
- (xi) Landscaping, grading, and other site or public improvements; and

(xii) Planning for or the marketing of the development and reuse of the installation.

(9) A commitment from the LRA to execute the agreement for transfer of the property and accept control of the property within a reasonable time, as determined by the Secretary concerned after consultation with the LRA, after the date of the property disposal record of decision. The determination of reasonable time should take account of the ability of the Secretary concerned to make the deed covenant, or covenant deferral, required under 42 U.S.C. 9620(h)(3).

(e) The Secretary concerned will review the application and, to the extent practicable, provide a preliminary determination within 30 days whether the Military Department can accept the application for negotiation of terms and conditions, pursuant to the following determinations:

(1) The LRA submitting the application has been duly recognized by the DoD Office of Economic Adjustment;

(2) The application is complete. With respect to the elements of the application specified in paragraphs (d)(6) and (d)(7) of this section, the Secretary concerned may accept the application for negotiation of terms and conditions without these elements, provided the Secretary concerned is satisfied that the LRA has a reasonable plan in place to provide these elements prior to transfer of the property; and

(3) The proposed EDC will more effectively enable achievement of the job generation objectives of the redevelopment plan regarding the parcel requested than other federal real property disposal authorities.

(f) Upon acceptance of an EDC application, the Secretary concerned will determine if the proposed terms and conditions are fair and reasonable. The Secretary concerned may propose and negotiate any alternative terms or conditions that the Secretary considers necessary. The following factors will be considered, as appropriate, in evaluating the terms and conditions of the proposed transfer, including price, time of payment, and other relevant methods of compensation to the Federal Government.

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

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

(3) Consistency with the entire redevelopment plan.

(4) Financial feasibility of the development, including market analysis

and need and extent of proposed infrastructure and other investments.

(5) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the plan. Higher risk and investment made by the LRA should be recognized with more favorable terms and conditions, to encourage local investment to support job generation.

(6) Current local and regional real estate market conditions, including market demand for the property.

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

(8) Economic benefit to the Federal Government, including protection and maintenance cost savings, environmental clean-up savings and anticipated consideration from the transfer.

(9) Compliance with applicable Federal, state, interstate, and local laws and regulations.

(g) The Secretary concerned will negotiate the terms and conditions of each transaction with the LRA. The Secretary concerned will have the discretion and flexibility to enter into agreements that specify the form of payment and the schedule.

(h)(1) The Secretary concerned may accept, as consideration, any combination of the following:

(i) Cash, including a share of the revenues that the redevelopment authority receives from third-party buyers or lessees from sales and long-term leases of the conveyed property (i.e., a share of the revenues generated from the redevelopment project);

(ii) Goods and services;

(iii) Real property and improvements;

or

(iv) Such other consideration as the Secretary considers appropriate.

(2) The consideration may be paid over time.

(3) All cash consideration for property at a military installation where the date of approval of closure or realignment is before January 1, 2005, shall be deposited in the account established under Section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101-510; 10 U.S.C. 2687 note). All cash consideration for property at a military installation where the date of approval of closure or realignment is after January 1, 2005, shall be deposited in the account established under Section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101-510; 10 U.S.C. 2687 note).

(4) The Secretary concerned may use in-kind consideration received from an LRA at any location under control of the Secretary concerned.

(i) The LRA and the Secretary concerned may agree on a schedule for sale of parcels and payment participation.

(j) Additional provisions shall be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon consideration, which may include such items as predetermined release prices, accounting standards or other appropriate clauses designed to ensure payment and protect against fraudulent transactions. Every agreement for an EDC shall contain provisions allowing the Secretary concerned to recoup from the LRA such portion of the proceeds from its sale or lease as the Secretary concerned determines appropriate if the LRA does not use the proceeds to support economic redevelopment of or related to the installation for the period specified in paragraph (d)(8) of this section. The Secretary concerned and an LRA may enter into a mutually agreed participation agreement which may include input by the Secretary concerned on the LRA's disposal of EDC parcels.

(k) The Secretary concerned may take account of property value but is not required to formally determine the estimated fair market value of the property for any EDC. The consideration negotiated should be based on a business plan and development pro-forma that assumes the uses in the redevelopment plan. The Secretary concerned may determine the nature and extent of any additional information needed for purposes of negotiation. To the extent not prohibited by law, information used should be shared with the LRA.

(l) After evaluating the application based upon the criteria specified in paragraph (f) of this section, and negotiating terms and conditions, the Secretary concerned shall present the proposed EDC to the Deputy Under Secretary of Defense (Installations and Environment) for formal coordination before announcing approval of the application.

#### § 174.10 [Removed and Reserved]

3. § 174.10 is removed and reserved:

Dated: December 10, 2010.

**Patricia L. Toppings,**  
OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. 2010-31649 Filed 12-16-10; 8:45 am]

BILLING CODE 5001-06-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2009-0876; FRL-9240-4]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the West Virginia Department of Environmental Protection on July 20, 2009. This revision will establish nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone, add the Federally equivalent provisions to the rules for the Prevention of Significant Deterioration (PSD) as they pertain to "reasonable possibility" and delete certain references to pollution control projects (PCPs) and clean units (CUs) to make the West Virginia PSD program consistent with the Federal PSD regulations. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before January 18, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0876 by one of the following methods:

A. <http://www.regulations.gov>. Follow the online instructions for submitting comments.

B. *E-mail:* [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

C. *Mail:* EPA-R03-OAR-2009-0876, Kathleen Cox, Associate Director, Office of Permits & Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2009-0876. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376, or by e-mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On July 20, 2009, the State of West Virginia submitted a revision to its State Implementation Plan (SIP) to replace the current SIP-approved version of 45CSR14, entitled, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.