

Headquarters U.S. Air Force

Integrity - Service - Excellence



BRAC 2005

LEGAL OVERVIEW

U.S. AIR FORCE

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SAF/GCN



OVERVIEW

- **BACKGROUND**
- **PROCEDURES**
- **FUTURE CONSIDERATIONS**



BACKGROUND

- **Defense Base Closure and Realignment Act of 1990 (P.L. 101-510, 10 USC § 2687, notes)**
- **Competing bills/political climate**
- **DoD's Efficient Facilities Initiative**
- **S. 1438, National Defense Authorization Act for FY 2002 (Title XXX)**



PROCEDURES

- **§ 3001/2912 Force-Structure Plan (FSP) and Infrastructure Inventory (II)**
 - **Submitted as part of budget justification documents for FY 2005 (Feb 2004)**
 - **FSP based on assessment of probable threats to national security 2005-2025**
 - **Major military force units needed**
 - **Anticipated funding levels available for national defense**



PROCEDURES-cont.

- **II: Comprehensive inventory of installations worldwide for each department**
 - **Specify numbers and type for active duty and reserve**
- **Based upon FSP and II, SECDEF to submit:**
 - **Description of infrastructure needed for FSP**
 - **Discussion of excess infrastructure and infrastructure capacity**



PROCEDURES-cont.

- **Economic analysis of BRAC to reduce excess infrastructure**
- **Special considerations (“shall”)**
 - **Anticipated continuing need for and availability of installations outside US, along with current and potential use restrictions**
 - **Efficiencies to be gained from joint branch tenancy**
- **FSP and II may be revised and submitted as part of FY 2006 budget justification (Feb 2005)**



PROCEDURES-cont.

■ SECDEF BRAC Certification

- Based upon and contemporaneous with FSP and II, to certify whether BRAC need exists (Feb 2004)
- If does, must also certify “would result in annual net savings for each of the military departments beginning” NLT FY 2011
- If no certification, BRAC 2005 process terminates



PROCEDURES-cont.

- **Comptroller General (CG) Evaluation**
 - **Due to Congress NLT 60 days after FSP and II submitted (Apr 2004)**
 - **CG must evaluate:**
 - **FSP, II and final selection criteria**
 - **Accuracy and analytic sufficiency**
 - **Need for additional BRAC round**



PROCEDURES-cont.

- **Selection Criteria (SC)**
 - **§ 3002/2913**
 - **Must publish proposed SC in Federal Register (FR) and transmit to Congress NLT 31 Dec 2003**
 - **30 day public comment period (minimum)**
 - **Final SC must be published and transmitted to Congress NLT 16 Feb 2004**
 - **Are then “the final selection criteria to be used” unless disapproved by Congressional Act NLT 15 Mar 2004**



PROCEDURES-cont.

- **Criteria Factors**
 - **Military value must be primary, to include:**
 - **Preserving suitable training areas to ensure readiness**
 - **Preserving installations in US necessary as staging areas in homeland defense missions**
 - **Preserving installations through a diversity of climate and terrain for training**
 - **Impact on joint war fighting, training and readiness**
 - **Contingency, mobilization and future total force requirements for operations and training**



PROCEDURES-cont.

- **Special other required considerations**
 - **Extent and timing of potential cost-savings, to include number of years for savings to exceed costs after closure or realignment**
 - **Economic impact on communities in vicinity**
 - **Ability of receiving community infrastructures to support forces, missions and personnel**
 - **Cost impacts re potential environmental restoration, waste management and environmental compliance activities**



PROCEDURES-cont.

- **Any proposed SC re cost savings or return on investment must consider costs of any other DoD or federal agency activity required to assume responsibility at installation**
- **OSD must issue new SC**
- **Must consider all installations equally**
- **BRAC 2005 is only process that can be used to BRAC installations above threshold until 15 Apr. 2006-key pitfall area**



PROCEDURES-cont.

- **Authorization to Conduct BRAC 2005**
 - **§3001/2912(d)**
 - **NLT 15 Mar 2005, President must transmit to Senate nominations for commission members**
 - **Nine members**
 - **If fail to send, BRAC 2005 process terminated**
 - **Commission to meet CY 2005, terminate on 15 Apr 2006**



PROCEDURES-cont.

- **DoD BRAC Recommendations**
 - **§3003/2914**
 - **SECDEF must publish in FR and transmit to Congress
NLT 16 May 2005**
 - **Must be based on FSP, II and final SC**
 - **SECDEF may recommend placing in inactive status if:**
 - **May be needed for national security**
 - **Retention otherwise in US interest**



PROCEDURES-cont.

- **Must consider local government’s views**
 - That “would approve” closure or realignment of the installation
 - However, SECDEF recommendations to be based only on FSP, II and SC
 - Recommendation, however, must include a “statement of the result of the consideration of any notice” and “set forth the reasons for the result”



PROCEDURES-cont.

- **Commission Review and Recommendations**
 - **§ 3003/2914(d)**
 - **Commission’s report (findings and recommendations) to be transmitted to President NLT 8 Sep 2005**
 - **Commission must provide upon request of any member of Congress “information used by the Commission in making its recommendations”**



PROCEDURES-cont.

- **Limitations on Commission adding to list**
 - **At least seven members must support**
 - **Must provide SECDEF 15 days to explain**
 - **Commission must invite SECDEF to testify**
- **Privatization in place**
 - **Must be specified in Commission Report and recommendations**
 - **Commission must determine most cost-effective method to implement**
- **CG to submit report to Congress NLT 1 Jul 2005 analyzing SECDEF recommendations and selection process**



PROCEDURES-cont.

- **Review by the President**
 - **§ 3003/2914(e)**
 - **To review Commission recommendations and prepare approval/disapproval report NLT 23 Sep 2005**
 - **If disapproves, Commission to revise and transmit NLT 20 Oct 2005**
 - **If President does not transmit to Congress by 07 Nov 2005 approval and certification, BRAC 2005 process terminated**



PROCEDURES-cont.

- **Congressional Disapproval**
 - **Established in PL 101-510, § 2904**
 - **Must disapprove all or none of the recommendations**
 - **Requires joint resolution of both House and Senate**
 - **Joint resolution must be passed before earlier of:**
 - **End of 45 day period beginning on date President transmits report to Congress**
 - **Final adjournment of Congress (sine die) for the session**



PROCEDURES-cont.

- **Department of Defense Base Closure Account 2005**
 - **§ 3005/2906A.**
 - **Established, as a single account, when SECDEF makes certification (Feb 2004)**
 - **Funds deposited into:**
 - **As authorized and appropriated by Congress**
 - **Transferred from any other appropriated DoD funds, subject to Congressional approval in an Appropriations Act**
 - **Proceeds from lease, transfer or property disposal of BRAC 2005 installations**



PROCEDURES-cont.

■ Use of funds:

- Only for purposes described in § 2905 for BRAC 2005 installations (implementation)
- Construction projects exceeding maximum for minor military construction project (\$750,000):
 - Must provide written notification of to Congressional defense committees
 - Describe nature of and justification for project and amount



PROCEDURES-cont.

■ Reports

- Once use account, SECDEF to transmit yearly report to Congressional defense committees NLT 29 Nov.
- Discuss amount and nature of deposits into and expenditures from that FY
- Numerous detailed reporting provisions and requirements



PROCEDURES-cont.

- **DOE Infrastructure Plan for the nuclear weapons complex**
 - **§ 3008**
 - **NLT date DOE submits FY 2004 budget request, SECDOE to “submit an infrastructure plan for the nuclear weapons complex adequate to support the nuclear weapons stockpile, the naval reactors program, and nonproliferation and national security activities”**
 - **To recommend whether need to close or realign any such facilities, whether to establish a process to do so, and “any additional legislative authority necessary to implement the recommendations.”**



FUTURE CONSIDERATIONS

- DoD driven - waiting policy and guidance
- Selection criteria will be immediate priority