



Department of Defense INSTRUCTION

NUMBER 4165.69
April 6, 2005

USD(AT&L)

SUBJECT: Realignment of DoD Sites Overseas

- References:
- (a) DoD Directive 4165.6, "Real Property," October 13, 2004
 - (b) Section 2921, National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510 (as amended) (10 U.S.C. 2687 note)
 - (c) Section 8018 of the Department of Defense Appropriations Act 2005, Public Law 108-287 (Residual Value Settlements with NATO Members) (10 U.S.C. 2687 note)
 - (d) Sections 321 and 322 of the Strom Thurmond National Defense Authorization Act, 1999, Public Law 105-261¹
 - (e) through (h), see enclosure 1

1. PURPOSE

This Instruction implements reference (a) in accordance with references (b), (c), and (d); delegates authority and assigns responsibilities; and prescribes procedures for the realignment of sites used, controlled, and maintained by the Department of Defense outside the United States. It cancels the Secretary of Defense's message 142159Z (reference (e)) and any previous guidance inconsistent with its provisions.

2. APPLICABILITY AND SCOPE

2.1. This Instruction applies to:

2.1.1. The Office of the Secretary of Defense (OSD), the Military Departments (including their Reserve components), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

¹ See also section 324 of the National Defense Authorization Act, 1993, Public Law 102-484 (Sense of the Congress on Overseas Environmental Restoration), available in Selected Defense Related-Laws under BRAC and Real Property Issues at www.house.gov/hasc/reports.

2.1.2. All DoD sites and associated facilities located outside the United States.

2.2. This Instruction is intended to be consistent with U.S. law and all applicable international agreements. Specific diplomatic, legal, or procedural matters not addressed directly by this Instruction or applicable U.S. or international agreements should be resolved on a case-by-case basis in consultation amongst the offices of the Under Secretary of Defense for Policy (USD(P)), and the Deputy Under Secretary of Defense for Installations and Environment (DUSD(I&E)) under the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)).

2.3. This Instruction does not apply to realignment of temporary DoD facilities or sites acquired or controlled by DoD in areas with no long-term U.S. presence during the conduct or in support of planned or on-going contingency operations; realignment of temporary facilities or sites used while U.S. forces are operating as part of a multi-national force, or property leased from private parties, which will be returned in accordance with the terms of the lease. Realignment of DoD facilities and sites under the foregoing circumstances, including documentation of relevant environmental conditions at such facilities and sites, shall be accomplished in accordance with relevant U.S. law, regulations, and international law, including relevant international agreements, applicable property leases, DoD policy, and specific annexes (e.g. Environmental) incorporated into operations plans, operations orders, or similar operational directives.

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

It is DoD policy that:

4.1. Overseas sites and associated facilities used, operated, and maintained by the Department of Defense that are no longer required shall be promptly nominated for realignment.

4.2. With the exception of the routine realignment of small parcels and the expedited realignment of property having no adverse effects on DoD activities, only the Secretary of Defense or Deputy Secretary of Defense may approve overseas realignment actions and the timing of public announcements.

4.3. To the maximum extent possible, the Department of Defense shall take steps to recover the residual value of U.S.-funded improvements at realigned sites (including non-appropriated funded facilities), in accordance with references (b) and (c) and paragraph 2.2., above. The amount of residual value recovered may be affected by the extent of environmental remediation that may be required under DoD policy and the reuse potential of the site.

5. RESPONSIBILITIES

5.1. The Deputy Under Secretary of Defense for Installations and Environment, under the USD(AT&L), shall:

5.1.1. Provide oversight of the realignment process.

5.1.2. Coordinate on USD(P) overseas realignment nomination packages.

5.1.3. Implement this Instruction and provide additional guidance as necessary.

5.1.4. Provide policy advice and assistance on environmental matters, residual value, and payment-in-kind actions.

5.1.5. Review proposals concerning recovery of residual value, including payments-in-kind, and obtain coordination from the USD(P), the Under Secretary of Defense (Comptroller) (USD(C), the Under Secretary of Defense (Personnel and Readiness) (USD(P&R), the General Counsel of the Department of Defense, the Assistant Secretary of Defense for Legislative Affairs (ASD(LA), and other relevant OSD officials.

5.1.6. Prepare correspondence for the Secretary of Defense to the Office of Management and Budget (OMB), Congressional committees, and others as appropriate concerning residual value and payment-in-kind actions.

5.2. The Under Secretary of Defense for Policy shall:

5.2.1. Review nominations for realignment of overseas sites and obtain coordination from the USD(C), the USD(P&R), the General Counsel of the Department of Defense, the DUSD(I&E), the ASD(LA), and other relevant OSD officials.

5.2.2. Prepare and submit final realignment proposals to the Secretary of Defense for approval or disapproval.

5.2.3. Notify the Military Department Secretaries, the Chairman of the Joint Chiefs of Staff, the Combatant Commanders, the USD(P&R), the DUSD(I&E), the Assistant Secretary of Defense for Public Affairs (ASD(PA)), the General Counsel of the Department of Defense, the USD(C), the ASD(LA), and other relevant OSD officials of the Secretary of Defense's decision on realignment nominations.

5.2.4. Forward overseas realignment nominations to the appropriate office within the Department of State (DOS) to coordinate authority to negotiate and conclude international agreements to return nominated sites, as appropriate, and to request that the relevant U.S. Embassy be notified of intended realignment actions and initiate host nation consultation, as appropriate. After DOS coordination, the USD(P) shall submit the site realignment nomination to the Secretary of Defense for final approval.

5.3 The Assistant Secretary of Defense for Public Affairs shall:

5.3.1. Be responsible for public announcement of a decision to realign overseas sites.

5.3.2. Approve the content and timing of related press releases and issue public affairs guidance to public affairs offices of subordinate DoD components.

5.4. The Assistant Secretary of Defense for Legislative Affairs shall:

5.4.1. Determine, in accordance with references (b), (c), and (d) or as otherwise warranted, whether Congressional interest in a particular realignment decision would warrant notification to the Congress.

5.4.2. If so, notify appropriate Congressional offices and committees.

5.5. The Chairman of the Joint Chiefs of Staff shall:

5.5.1. Coordinate on and obtain coordination from relevant Combatant Commanders on nominations for overseas realignments, proposed residual value settlements, and payment-in-kind actions.

5.5.2. Forward Combatant Commander nominations for overseas realignments, with Joint Staff recommendations, to the USD(P) for coordination and approval.

5.5.3. Forward proposed residual value settlements including payment-in-kind actions, with Joint Staff recommendations, to the DUSD(I&E) for coordination and approval.

5.6. The Commanders of the Combatant Commands, through the Chairman of the Joint Chief of Staff, shall:

5.6.1. Review and screen proposals of an initiating DoD Component for realignment, residual value, and payment-in-kind actions.

5.6.2. Nominate proposed sites for realignment and forward them through the Chairman of the Joint Chiefs of Staff to the USD(P) with recommendations.

5.6.3. Forward recommendations for residual value and payment-in-kind actions through the Chairman of the Joint Chiefs of Staff to the DUSD(I&E).

5.6.4. Develop theater-unique classification guidance and foreign disclosure policy for implementation of this Instruction.

5.6.5. Provide oversight and assistance to designated agents, such as in-theater Component Commanders and sub-unified Commanders for the negotiation and implementation of realignment actions.

5.6.6. Coordinate realignment actions involving North Atlantic Treaty Organization (NATO) infrastructure with the major NATO Commanders as required by NATO policy.

6. PROCEDURES

6.1. General Guidance.

6.1.1. Proposals to realign overseas sites shall be coordinated with the USD(P) before commencing the action.

6.1.2. Negotiations with host nations for the realignment of overseas sites and facilities shall be in accordance with applicable U.S. law, DoD Directive 5530.2 (reference (f)), and applicable international agreements.

6.1.3. After the Secretary of Defense has made a decision to realign a site, U.S. funds shall not be spent at those sites for construction, maintenance or repair beyond the minimum necessary to sustain current operations or for environmental remediation except as required under DoD policy pursuant to DoD Instruction 4715.8 (reference (g)). However, a reasonable expenditure of funds is authorized to take appropriate actions to prepare a facility properly for an extended period of non-use. This includes the use of funds to document the environmental conditions of a site being returned to a host nation (see enclosures 2 and 3).

6.1.4. The Combatant Commander shall determine the appropriate security classification, if any, of proposals for overseas realignments. Correspondence involving proposed or recommended overseas site realignments may be deemed classified as Confidential or Secret, based upon such considerations as host-nation sensitivities, degree of local economic impact, and/or military, operational or DoD policy issues. The classification of such proposals shall expire upon public announcement of the action, at which time related correspondence normally shall become unclassified. The U.S. negotiating positions associated with the action, including (but not limited to) market value analyses and estimates for proposed payments-in-kind, shall be kept, at a minimum, For Official Use Only.

6.1.5. Notwithstanding paragraphs 6.2. and 6.3., a small parcel (a portion of an installation representing less than 5 percent of the overall installation in land area or infrastructure value) may be authorized for realignment by the in-theater Component Commander (or sub-unified Commander, where applicable), when the realignment does not affect stationing/basing and when no residual value considerations apply. A summary list of parcels falling under this category shall be submitted with the Annual Residual Value Report each year. Examples include types of "housekeeping" adjustments incident to managing a site, such as returns and exchanges of land (and incidental relocation of out-buildings) on the border of an installation for road widening, etc.

6.1.6. Every effort should be made to expedite the selection, nomination, review, approval, and realignment process in order to minimize U.S. operating and maintenance expenses at sites proposed for realignment.

6.2. Nomination and Approval Procedures.

6.2.1. The in-theater Component Commander (through the subordinate unified Commander, where applicable) shall initiate proposals for realignment of overseas sites. Initial proposals must be fully coordinated with affected Combatant Commanders, the Military Departments, the Defense Agencies, installation commanders, and tenant organizations. All proposals shall be forwarded to the Combatant Commander.

6.2.2. Proposals for realignment shall include, at a minimum, the data listed in enclosure 4 to this Instruction.

6.2.3. The Combatant Commander or subordinate unified Commander, where applicable, shall review and screen the proposed realignment to determine whether there are possible alternative uses for the site that are consistent with applicable agreements with the host nation. Once the screening is complete, the Combatant Commander shall determine whether to nominate the site for realignment. Nominations shall be sent through the Chairman of the Joint Chiefs of Staff to the USD(P).

6.2.4. The Chairman of the Joint Chiefs of Staff shall review Combatant Command nominations and seek coordination of nominations with other Combatant Commanders and the Military Departments to afford an opportunity to review nominations in light of budget constraints, current defense strategies, and long-range planning. The Chairman of the Joint Chiefs of Staff shall forward coordinated recommendations to USD(P).

6.2.5. Upon receipt of a nomination, the USD(P) shall notify the DUSD(I&E) and coordinate the nomination as described in paragraph 5.2., above. In addition, to the extent possible, the USD(P) shall provide the DOS any information concerning the effects of planned or possible actions on the local national work force.

6.2.6. Alternate Realignment Procedure for Japan and Korea. For realignment of sites in Japan and Korea, the USD(P) shall, after completing OSD coordination, submit nominations directly to the Secretary of Defense for approval without seeking host nation consultation through the DOS. (The DOS should be kept informed of such proposals.) Upon Secretary of Defense approval, the USD(P), through the Chairman of the Joint Chiefs of Staff, shall authorize the Commander, U.S. Forces Japan (USFJ) or Commander, U.S. Forces Korea (USFK), as appropriate, to begin negotiations for the realignment through the appropriate Status of Forces Agreement (SOFA) committees (committee/panel negotiation equating to host nation consultation). Upon agreement of the committee, the USFJ or the USFK, as appropriate, shall notify the USD(P), through the Commander, U.S. Pacific Command and the Chairman of the Joint Chiefs of Staff, of the results of the negotiation.

6.2.7. Following Secretary of Defense approval to realign a site, the USD(P) shall provide written notification to the Combatant Commander, and shall notify the Chairman of the Joint Chiefs of Staff, the Military Departments, the DOS, and the appropriate offices in the OSD, including the DUSD(I&E), the ASD(PA), and the ASD(LA).

6.2.8. The ASD(LA) shall make appropriate Congressional notifications.

6.2.9. The USD(P) shall notify the ASD(PA) and DUSD(I&E) of the results of the negotiation for purposes of preparation of press guidance, in accordance with paragraph 5.3., above. Sufficient time should be taken prior to any public announcement to allow embassies to make pre-publicity notification to the host government at least 48 hours in advance of the announcement or for longer periods as appropriate under applicable international agreements.

6.2.10. After a site is approved for realignment, a proposal to change the realignment status (e.g., "return" to "retain") shall be submitted by the Combatant Commander to USD(P) through the Chairman of the Joint Chiefs of Staff. The approval process above shall apply.

6.2.11. Alternate procedure for Expedited Actions. Realignments that do not involve personnel; have no anticipated adverse economic, local, national, military or political effects; and do not involve recovery of residual value may be processed through an alternative, expedited procedure. In such instances, the in-theater Component Commander shall notify the Combatant Commander of the proposed action. The Combatant Commander shall coordinate with the applicable U.S. Embassy to confirm the assessment of no adverse effects. If the Combatant Commander concurs in the action and assessment of no anticipated adverse effects, then the Combatant Commander shall notify the USD(P) and DUSD(I&E) of his or her intention to effect the realignment, through the Chairman of the Joint Chiefs of Staff, at least 60 days in advance of the action. The notification will describe the proposed realignment and provide the rationale for expediting the process.

6.3. Negotiations (see enclosure 3 for additional guidance).

6.3.1. Following public notification, the Combatant Commander or a designated real estate executive agent having the appropriate level of authority, or other official or Department as identified in an authorization to negotiate and conclude an agreement, shall begin negotiations with the host government.

6.3.2. Negotiations should address, at a minimum, the schedule for departure of personnel and removal of equipment, joint inspection of facilities to be realigned, disposition of U.S. facilities to be retained at the site, exchange of information on environmental conditions, transfer of facilities, calculation of the current value of the facilities, and estimated residual value.

6.3.3. For the purposes of establishing a starting point for negotiations with host governments on residual value, the applicable in-theater Component Commander shall gather data on the site nominated for realignment including total U.S. investment, documentation of environmental conditions, and assessment of the current value of U.S. improvements to the site.

6.3.4. Alternate Negotiation Procedure for Japan and Korea. In accordance with existing bilateral agreements with Japan and Korea, those countries are not required to provide compensation to the United States for improvements made to the facilities being returned to the host nation. Conversely, the United States is not required to restore facilities to the conditions as they existed at the time they became available to the United States. The other matters listed in subparagraph 6.3.2., however, normally should be addressed. Users of this Instruction should review applicable agreements as they relate to realignment matters.

6.3.5. Payment-in-Kind Compensation.

6.3.5.1. If host nation authorities request that compensation to the United States for negotiated residual value be accepted in the form of payment-in-kind, and the Combatant Commander determines that accepting payment-in-kind is in the best interest of the United States, then the payment-in-kind proposal shall be submitted by the Combatant Commander, through the Chairman of the Joint Chiefs of Staff, to the DUSD(I&E) for coordination and approval by the Secretary of Defense. Proposals should include the rationale for acceptance of payment-in-kind, the expected benefits to the United States, and an estimate of the value of the U.S.-funded investments under consideration.

6.3.5.2. Proposals to negotiate payment-in-kind should indicate that the acceptance of payment-in-kind is a last resort and that discussions of cash payment have been unsuccessful, and include a discussion of the adjustments to be made in the future-years defense program or the DoD budget to reflect costs that may no longer be incurred as a result of the payment-in-kind. Such proposals will be coordinated with the USD(P), the USD(C), and the General Counsel of the Department of Defense.

6.3.5.3. Upon receiving Secretary of Defense approval to negotiate payment-in-kind, the DUSD(I&E) shall notify the Combatant Commander of the approval and, in accordance with references (b) and (c) as applicable, prepare correspondence for Secretary of Defense signature notifying Congress of the intent to negotiate payments-in-kind.

6.4. Reporting.

6.4.1. At the conclusion of negotiations, the Combatant Commander shall submit a residual value settlement package summarizing the agreed residual value, including (at a minimum) the date residual value negotiations began and concluded, the present day value of U.S. investments, final negotiated residual value including any non-monetary payment-in-kind, and justification for any differences between the investments made and the negotiated residual value. Reports shall be submitted to the DUSD(I&E) through the Chairman of the Joint Chiefs of Staff.

6.4.1.1. Proposed settlements for residual value must be reviewed by the OMB when the value of the U.S. improvements totals more than \$10 million. The DUSD(I&E) shall prepare correspondence for Secretary of Defense or Deputy Secretary of Defense signature forwarding proposed settlements meeting this criterion to the OMB for review pursuant to reference (b).

6.4.2. If the host nation is a NATO member, and payment-in-kind has been accepted as compensation for residual value, the proposed settlement package shall contain a description of the agreed-upon construction, repair, or facility improvement project, a certification that the project is needed by U.S. forces, an explanation of how the project will aid in the achievement of the mission of those forces, and a certification that if the project were to be carried out by the Department of Defense, appropriations would be necessary and that it would be necessary to provide for the project in the next future-years defense program.

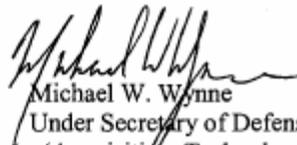
6.4.3. The Secretary of Defense shall notify the appropriate Congressional committees of the proposed payment-in-kind settlement in accordance with references (b) and (c) as applicable. The Combatant Commanders must wait at least 30 days from the time the proposed settlement is submitted to Congress before concluding an agreement for realignment with a NATO host nation.

6.4.4. Implementing agreements with host nations for realignments shall be executed by the Combatant Commander or his designated agent in accordance with applicable U.S. laws, regulations, and DoD policy, and consistent with applicable international agreements.

6.4.5. The Combatant Commanders shall provide an annual update on the status of realignment actions and residual value negotiations to the DUSD(I&E), who shall provide a copy to the USD(P).

7. EFFECTIVE DATE

This Instruction is effective immediately.



Michael W. Wynne
Under Secretary of Defense
(Acquisition, Technology and Logistics)

Enclosures – 3

- E1. References, continued
- E2. Definitions
- E3. Additional Guidance
- E4. Data Requirements

E1. ENCLOSURE 1

REFERENCES, continued

- (e) SecDef Message, 142159Z DEC 93, "DoD Policy and Procedures for the Realignment of Overseas Sites" (hereby canceled)
- (f) DoD Directive 5530.3, "International Agreements," June 11, 1987
- (g) DoD Instruction 4715.8, "Environmental Remediation for DoD Activities Overseas," February 2, 1998
- (h) Department of Defense Dictionary of Military and Associated Terms, current edition

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Current Value. The estimated value, in dollars, of facilities or other capital improvements located on a site. Generally, the current value of facilities (sometimes referred to as the “present day cost of investments”) is calculated by taking the sum of all U.S.-funded construction or improvements made to the facility, and adjusting that sum for inflation, currency fluctuation, age, condition, location, replacement cost, and current market trends for similar facilities in the area.

E2.1.2. Environmental Closure or Environmental Status Report. A document, signed by the Environmental Executive Agent and installation commander, characterizing the environmental condition of a site being returned to a host nation. Any studies that accurately characterize soil, ground water, and general environmental site conditions may be used for this purpose.

E2.1.3. Facilities. Non-removable infrastructure located at a site, including, but not limited to, buildings, roads, family housing, antennae, airfield pavements, above-ground and underground utilities piping, cable and wire, power plants and associated infrastructure, above-ground and underground fuels storage and distribution systems, solid waste treatment systems, and landfills.

E2.1.4. Host Nation. A foreign nation in which U.S. facilities nominated or under negotiation for realignment are located.

E2.1.5. Installation. A grouping of facilities, located in the same vicinity, that support particular DoD functions (Joint Publication 1-02, reference (h)).

E2.1.6. In-theater Component Commander. The Commander of U.S. forces within a particular Military Department in an applicable theater area (e.g., Commander, U.S. Air Forces in Europe).

E2.1.7. Payment-in-Kind. Compensation received from a host nation in the form of construction, repair, and base support projects instead of residual value cash payment.

E2.1.8. Realignment. The return, or partial return, of overseas sites operated or maintained by U.S. personnel or forces to host nation control. It also applies to the conversion to standby status of overseas sites operated or maintained by the United States.

E2.1.9. Residual Value. The negotiated monetary or non-monetary compensation DoD receives from host nations for DoD-funded facilities or other capital improvements returned to the host nation under a realignment action. The applicability or terms of residual value will vary depending on the host nation, affected by such factors as the applicable international agreement, and the extent of environmental effects and reuse potential of the property.

E2.1.10. Site. Any parcel of land, regardless of size, provided to the Department of Defense for its use or operations. “Overseas sites” refers to sites located outside the United States. “Site” may be used to define the land area encompassing a DoD installation in its entirety or any part thereof.

E2.1.11. Small parcel. A portion of an installation representing less than 5 percent of the overall installation in land area or infrastructure value.

E2.1.12. Sub-unified Commander. The Commander of a sub-unified command having functions and responsibilities similar to those of the Commanders of the Combatant Commands and exercising operational control of commands and forces within the assigned operational area (e.g., Commander, U.S. Forces Japan; Commander, Iceland Defense Force).

E2.1.13. United States. The 50 States, the District of Columbia, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Puerto Rico, Virgin Islands, and Wake Island.

E3. ENCLOSURE 3

ADDITIONAL GUIDANCE

E3.1. RESIDUAL VALUE

Residual value shall normally be sought as a cash payment to the DoD Overseas Military Facility Investment Recovery Account. It is recognized, however, that insistence on monetary payment may not optimize U.S. interests. Therefore, the use of payment-in-kind as an alternative reimbursement strategy is authorized if circumstances warrant. In such instances, the following policies apply:

E3.1.1. Authorization to negotiate residual value compensation in the form of payment-in-kind (non-monetary compensation) must be obtained from the Secretary of Defense or Deputy Secretary of Defense prior to negotiations with host governments.

E3.1.2. Payment-in-kind shall represent a reinvestment of U.S. dollars that are to be included in future negotiations for residual value if the U.S. determines it no longer needs the newly constructed or improved facility.

E3.1.3. Prior to entering into or concluding an agreement involving payment-in-kind, Congress shall be notified in accordance with references (b) and (c), as appropriate.

E2.3. ENVIRONMENTAL CONDITIONS

E3.2.1. The requirements of references (d) and (g) shall be followed with regard to environmental remediation.

E3.2.2. Any studies that provide current and sufficiently detailed information may be used for this purpose. However, the expenditure of funds for new studies shall be the minimum necessary to provide such information as authorized or required by subparagraph 6.1.3. and enclosure 4, for use by residual value negotiators, and to protect the United States from unwarranted liability claims and adverse publicity.

E4. ENCLOSURE 4

DATA TO BE INCLUDED IN PROPOSALS AND NOMINATIONS OF OVERSEAS
REALIGNMENTS

Host nation:

Name of parent installation:

Specific site nominated (include the name of the site, as well as a general description of size and location):

Component Commander:

Affected tenant command(s)/other agency tenants:

Combatant Commander:

Number of authorized military personnel:

Number of authorized U.S. civilian personnel:

Number of authorized contractor personnel:

Number of authorized foreign national employees:

Effects on foreign national employees:

Proposed realignment date:

Current estimated market value of U.S.-funded improvements:

Estimated cost savings achieved by the realignment:

Any known imminent and substantial endangerments to human health and safety from contamination caused by past or present DoD operations as determined pursuant to reference (e). If any, explain:

Estimates of environmental damages, if known at the time of nomination:

Conditions that warrant special consideration regarding the timing of the announcement of the realignment:

Estimate of foreign national employees' severance pay under current agreements: