

§ 174.10

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.

[76 FR 70880, Nov. 16, 2011]

§ 174.10 [Reserved]

§ 174.11 Leasing of real property to non-Federal entities.

(a) Leasing of real property to non-Federal entities prior to the final disposition of closing and realigning installations may facilitate state and local economic adjustment efforts and encourage economic redevelopment, but the Secretary concerned will always concentrate on the final disposition of real and personal property.

(b) In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretary concerned may also lease real and personal property, pending final disposition, for less than fair market value if the Secretary determines that:

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

(2) The fair market value of the lease is unobtainable or not compatible with such public benefit.

(c) Pending final disposition of an installation, the Secretary concerned may grant interim leases which are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Secretary will generally lease to the LRA but can lease property directly to other entities. If the interim lease (after complying with NEPA) is entered into prior to completion of the final disposal decisions, the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing should not delay the final disposal of the property. After completion of the final disposal decisions, the term of the lease may be longer than five years.

(d) If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases

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will be applied by the lessee to the protection, maintenance, repair, improvement, and costs related to the property at the installation consistent with 10 U.S.C. 2667.

§ 174.12 Leasing of transferred real property by Federal agencies.

(a) The Secretary concerned may transfer real property that is still needed by a Federal agency (which for purposes of this section includes DoD Components) to an LRA provided the LRA agrees to lease the property to the Federal agency in accordance with all statutory and regulatory guidance.

(b) The decision whether to transfer property pursuant to such a leasing arrangement rests with the Secretary concerned. However, a Secretary shall only transfer property subject to such a leasing arrangement if the Federal agency that needs the property agrees to the leasing arrangement.

(c) If the subject property cannot be transferred pursuant to such a leasing arrangement (*e.g.*, the relevant Federal agency prefers ownership, the LRA and the Federal agency cannot agree on terms of the lease, or the Secretary concerned determines that such a lease would not be in the Federal interest), such property shall remain in Federal ownership unless and until the Secretary concerned determines that it is surplus.

(d) If a building or structure is proposed for transfer pursuant to this section, that which is leased by the Federal agency may be all or a portion of that building or structure.

(e) Transfers pursuant to this section must be to an LRA.

(f) Either existing Federal tenants or Federal agencies desiring to locate onto the property after operational closure may make use of such a leasing arrangement. The Secretary concerned may not enter into such a leasing arrangement unless:

(1) In the case of a Defense Agency, the Secretary concerned is acting in an Executive Agent capacity on behalf of the Agency that certifies that such a leasing arrangement is in the interest of that Agency; or,

(2) In the case of a Military Department, the Secretary concerned certifies that such a leasing arrangement