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Military Base Closures: Frequently Asked Questions

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Summary

These FAQs examine the provisions in the Constitution and in permanent statute that define and limit federal authority to disestablish or diminish employment at defense sites. They ***do not*** discuss the special, temporary BRAC (Base Realignment and Closure) process that Congress has periodically authorized for the reduction of defense infrastructure.

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Does the President require legislation to be passed before he can close a military base?

No. Congress wrote restrictions that would have prevented the closure of military installations without prior congressional action into several National Defense Authorization Acts during the 1960s and 1970s, but each of these bills was vetoed. Nevertheless, Congress has been able to place in statute provisions that delay actions to reduce operations at or close installations that employ civilians above certain numbers.

What is commonly referred to as a "BRAC (Base Realignment and Closure) round," a comprehensive reduction of Department of Defense (DOD) real property, has been carried out under the provisions of temporary statutes. The authorization for the most recent BRAC round expired on April 16, 2006. As outlined below, the President and his subordinates have considerable existing authority to close military installations.

What authority does the President have to close military bases?

Article II, Section 2, of the Constitution appoints the President as the commander in chief of the Army, the Navy, and the state Militias (National Guards) when they are called into federal service. This gives the President the authority to deploy those forces, which in common practice has included creating and closing the installations needed to house and train them.

Title 10 of the United States Code encompasses laws pertaining to the federal armed forces. Section 113 of Title 10 (10 U.S.C. §113) creates a Secretary of Defense, who is the principal assistant to the President in all matters relating to DOD and who has authority, direction, and control over the department. The Secretary is second to the President in commanding operational military forces. Other sections within Title 10 create the secretaries of the military departments (Army, Navy, and Air Force).[1] These offices are under the authority, direction, and control of the Secretary of Defense, and their statutory powers include the administration of federal real property (facilities and land) needed to carry out the functions of their departments. The authority to create, realign, or close installations under their administration has commonly been held to be one of those powers.

What role does Congress play in base closures?

Article I, Section 8, of the Constitution gives the Congress the authority to raise revenues and pay the debts of the United States, to provide for the common Defense, and to raise armies, maintain a Navy, and regulate the Militias when called to federal service. Therefore, Congress funds the operations of DOD through its annual defense and military construction appropriations acts and

[1] See 10 U.S.C. §3013 for the Secretary of the Army, 10 U.S.C. §5013 for the Secretary of the Navy, and 10 U.S.C. §8013 for the Secretary of the Air Force.

sets DOD organization and policy through the annual National Defense Authorization Act. Through this legislation, Congress authorizes the acquisition and transfer of title of military real property; funds the construction, maintenance, and operation of military installations; empowers DOD to waive statutory requirements in the disposal of property, and otherwise enables DOD to shape and maintain its infrastructure inventory. Nevertheless, primarily because the President and his subordinates have been responsible for the deployment of military forces, Congress has been hesitant to direct the creation or disestablishment of specific military installations.

Are there limits on presidential authority to close military bases?

Yes. Congress has passed, and the President has enacted, restrictions on presidential powers to close military installations using the annual appropriation and defense authorization bills.

Are those restrictions laid out in permanent law?

Yes, some are. Principal among them are 10 U.S.C. §2687 (Base Closures and Realignments), enacted in 1977,[2] and 10 U.S.C. 993 (Notification of Permanent Reduction of Sizable Numbers of Members of the Armed Forces), enacted in 2011.[3] These sections impose a "notify, evaluate, and wait" process on the Secretary of Defense and the secretaries of the military departments before they may take actions to close or realign any military installation that meets certain criteria.

What are those restrictions?

Under **10 U.S.C. §2687**, for military installations at which at least 300 civilian personnel are authorized to be employed, the Secretary of Defense or a secretary of a military department may take no action to carry out a **closure** until he submits to the Committees on Armed Services of the House and Senate

1. notification of the closure as part of the department's annual request for appropriations;
2. an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of the closure;
3. the criteria used to consider and recommend the military installation for closure; and
4. a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation is submitted to the committees.

[2] Act of August 1, 1977, P.L. 95-82, Title VI, § 612(a), 91 Stat. 379.

[3] Act of December 31, 2011, P.L. 112-81, Division B, Title XXVIII, Subtitle F, § 2864(a), 125 Stat. 1702.

The statute defines a **realignment** as any action that both reduces and relocates functions and civilian personnel positions. Exempted from the definition of a realignment is a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes. For realignments at installations of at least 300 authorized civilian positions, it imposes the same restrictions on the secretaries as a closure if the realignment involves a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed there.

The section also bans the preparation of any facility at another military installation intended to accept employees relocated by the closure or realignment until the four conditions listed above have been fulfilled.

While Section 2687 is predicated on the predicted reduction of civilian employees at an installation, **10 U.S.C. §993** lays out a similar, though slightly different, process where a reduction in uniformed military personnel is involved.

Section 993 prevents the secretaries concerned from taking any irrevocable action to implement a reduction of more than 1,000 members of the armed forces at an installation until they

1. notify the Committees on Armed Services of the reduction (there is no restriction on when such notification may be given);
2. justify the reduction and evaluate its local strategic and operational impact;
3. wait for a period of 21 days after the notification is submitted (14 days if submitted in electronic format).

Both statutes state that they do not apply in cases where the actions are being taken for reasons of national security or a military emergency

Did the restrictions in Sections 2687 and 993 apply to the disestablishment of Joint Forces Command (JFCOM)?

No. U.S. Joint Forces Command, a major combatant command, was headquartered in several military installations in the Hampton Roads, Virginia, area. During August of 2010, Secretary of Defense Robert Gates announced that the command would be disestablished and its headquarters staff would be disbanded, an event that occurred on August 31, 2011. Although the civilian employment within the headquarters exceeded the number needed to invoke Section 2687, it was not concentrated on a single installation. Rather, the disbandment represented either a reduction in force or a realignment at each of the several installations it affected. At none of the installations did the reduction in numbers reach a realignment threshold. Section 993, pertaining to the number of uniformed personnel, was not enacted until after JFCOM was disestablished. Therefore, there was no statutory requirement for congressional notification and justification.

Will future base closures constitute a BRAC round?

No. As outlined earlier, BRAC has been a process established under specific authorization from Congress that has been time-limited. There have been five distinct BRAC rounds, of which the last four have been carried out under the provisions of the Defense Base Closure and Realignment Act of 1990, as amended. The authority under that act expired on April 16, 2006. Therefore, there can be no future BRAC round until and unless Congress passes and the President signs legislation that specifically authorizes one. Because the relevant statutory authority has expired any such future round need not follow processes used in prior rounds.

If my question is not answered here, how can I find additional information?

The issues involved with the closing of any military installation can cover a range not necessarily restricted to those regarding real property. For questions related to the following broad areas, please consult with the following CRS experts:

1. Military personnel, manpower, pay, benefits: Lawrence Kapp, Specialist in Military Manpower Policy (lkapp@crs.loc.gov, 7-7609)
2. Defense budget, policy: Pat Towell, Specialist in U.S. Defense Policy and Budget (ptowell@crs.loc.gov, 7-2122)
3. Military construction, installations, BRAC: Daniel H. Else, Specialist in National Defense (delse@crs.loc.gov, 7-4996).

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