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SUBCHAPTER J—REAL PROPERTY

PARTS 641–642 [RESERVED]

PART 643—REAL ESTATE

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Subpart A—General

§ 643.1 Purpose.

(a) This regulation sets forth the authority, policy, responsibility, and procedure for making military real estate, under the control of the Department of the Army, available for use by other military departments, Federal agencies, State and local governmental agencies, private organizations or individuals.

(b) This regulation implements Department of Defense Directives and Instructions (4165 series), which include policies and procedures concerning use of military real estate.

§ 643.2 Applicability.

This regulation is applicable to Army military real estate, which includes land and improvements thereon and is also referred to as real property.

§ 643.3 Authority to grant use of real estate.

(a) The United States Constitution (Article IV, Section 3), provides that the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

(b) One of the principal authorities for the use of military real estate for commercial purposes is title 10 U.S.C., section 2667, which authorizes the Secretary of the Army (SA), whenever it is considered to be advantageous to the United States, to lease such real or personal property under Army control, which is not for the time needed for public use, upon such terms and conditions as the SA considers will promote the national defense or be in the public interest.

(c) Grants under statutory authorities cited in this regulation of real property pertaining to river and harbor, water resource development and flood control projects, will be under the policies and general guidelines set forth in this regulation.

(d) The SA may, under the general administrative powers vested in the office, authorize the use of real estate in the absence of statutory authority, in unusual circumstances, provided the property is not for the time being required for public use, the grant conveys no interest in the real estate and the proposed use will be of a direct benefit to the United States. Under this authority, the right to use real estate may also be granted to other military departments or Federal agencies.

(e) Except as otherwise provided in this regulation, an interest in real estate will not be granted unless authorized by law.

(f) Other laws authorizing grants for non-Army use of real estate for various purposes and Table of Related Army Regulations are set forth in appendixes A and B, respectively.

§ 643.4 Responsibilities of the Chief of Engineers (COE).

(a) After it is determined that real estate located in the United States, Puerto Rico, American Virgin Islands and the Panama Canal Zone, is available for non-Army use, the COE, except as otherwise provided in this regulation, is charged with responsibility for arranging for the use of real estate within the scope of this regulation. In the performance of this function, the COE is authorized to obtain such technical assistance from the using service as may be deemed necessary.

(b) COE has staff responsibility over real estate matters in Guam, American Samoa, Trust Territory of the Pacific Islands (TTPI), and in foreign countries.

(c) Except as otherwise provided in this regulation, determinations that real estate is available for non-Army use must be approved by the COE.

(d) The authority of the COE to grant use of real estate will be delegated, to the extent feasible, to U.S. Army Division and District Engineers (DE).

(e) The COE is responsible for the granting of temporary use of real estate reported excess to the General Services Administration (GSA), to the extent authorized by regulations issued pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*), and as provided in title 10 U.S.C., section 2667(f). The COE is also responsible for supervision and the issuance of instructions covering the granting of use of real estate within the scope of this regulation. Where Army or installation commanders are authorized to grant use of real estate, they are authorized to obtain technical assistance from the appropriate DE.

(f) In reviewing Army requirements for real estate (AR 405–10), the COE will consider the availability and adequacy of other military or federally-owned real estate to satisfy Army requirements before leasing privately-owned real estate, or renewing existing leases.

§ 643.5 Responsibilities of major commands (MACOMS) and special staff agencies.

Except as otherwise provided herein, determinations of availability will be approved by the COE or higher authority. MACOMS and special staff agencies are responsible for determining the real estate which can be made available for non-Army use, specifying the authorized uses of the property which will not be incompatible with military requirements for the property, the length of the term and any restrictions to be imposed on the grantee's use. Upon approval of the determination of availability, the real estate grant will be issued by the DE or as otherwise provided in this regulation.

§ 643.6 Responsibilities of overseas commanders.

Overseas commanders are charged with responsibility for the granting of use of real estate in overseas areas (Puerto Rico, Guam, the American Virgin Islands, American Samoa, TTPI, and the Canal Zone), and in foreign countries, for non-Army use under the policy and guidance expressed in this regulation, provided such use is consistent with the Status of Forces Agreements, Treaties, or the Agreements under which the Army controls such real estate.

§ 643.7 Preparation of report of availability.

A report of availability will be prepared by the installation commander or head of the special staff agency, when it is determined that for the time being the real estate is not required for Army use and can be made available, either concurrently with the Army, or exclusively, for use by another military department, by other Federal agencies, by State or local governmental agencies, private organizations or individuals. The installation commander's recommendation will be made as far in advance as possible so as to minimize the time lapse between the determination of availability and the date of use of the property by the grantee. Where real estate suitable for agricultural or grazing purposes is involved, the normal season for planting and grazing should be taken into consideration so that the property may be advertised in a timely manner. A copy of each report will be furnished to the appropriate DE for information. The report of availability will contain the information outlined in appendix C.

§ 643.8 Approval of report of availability.

The recommendation that real estate is determined available for non-Army use will be submitted by the installation commander to the major commander for approval, through the echelon of command. The major commander will approve such recommendation and submit it to the appropriate DE for action, except recommendations involving the following actions will be forwarded to the COE:

(a) A lease or license, including licenses to States for National Guard purposes, if the estimated annual rental value exceeds $50,000.

(b) A permit, license, or other grant of real estate, regardless of value, which results in a significant reduction or redirection of installation mission objectives;

(c) A lease of land where the proposed lease term is in excess of 25 years for banks and Federal credit untions and/or the building to be constructed exceeds DOD space criteria;

(d) Any permit, license, agreement, or other grant to another military department or to a Federal agency of large or significant real estate holdings for a period in excess of 5 years (including renewal options);

(e) A grant of an easement which involves the replacement or relocation of Army facilities at an estimated cost in excess of $100,000;

(f) A grant of an easement where the estimated annual fair market value of the easement exceeds $50,000.

(g) A grant which is controversial or unusual in nature and may embarrass the DA;

(h) A grant involving search for treasure trove;

(i) A grant for vehicle speed contests;

(j) A grant at an active industrial installation, excluding unimproved land areas.

NOTE: The Commander, U.S. Army Materiel Development & Readiness Command (DARCOM), is authorized to approve determinations of availability at standby industrial installations where the estimated annual rental value does not exceed $50,000.

§ 643.9 Approval of availability outside the United States.

Overseas commanders may authorize the use by another military department or a Federal agency of an installation or portion thereof located in designated overseas areas and in foreign countries when the real estate is not for the time needed for Army purposes or its concurrent use for other purposes will not interfere with the mission of the installation and such other use is not inconsistent with the agreement under which the property was acquired. Overseas commanders may also authorize any use of such property which is necessary in the accomplishment of the DA mission for which the property was acquired. All other proposed uses will be coordinated with the United States diplomatic mission in the country involved prior to submission to HQDA (DAEN-REM) WASH DC 20314, for approval. Where the overseas commander is authorized to approve such use, the commander or designee will prepare and execute the necessary grant.

§ 643.10 Reports to DOD and the congressional committees on Armed Services.

(a) The grants set forth in 1–8a. through f., with respect to real estate in the United States, Puerto Rico, American Virgin Islands, Guam, American Samoa, and the TTPI, require prior approval of the Assistant Secretary of Defense (I&L), and recommendations should contain information in justification thereof.

(b) The grants set forth in 1–8a., with respect to real estate in the United States and in designated overseas areas (excluding the Canal Zone), except leases for agricultural or grazing purposes, require a report to the Committees on Armed Services of the Senate and House of Representatives as provided in title 10 U.S.C., section 2662.

§ 643.11 Rights of entry.

Pending the signing of the formal instrument, no right of entry will be granted unless authorized by the office wherein the instrument will be signed, except where contrary instructions have previously been issued by the DA. When authorized, rights of entry will be granted by the DE, or overseas commander, as appropriate.

§ 643.12 Preparation and signing of instruments.

Instuments granting temporary use of real estate will be prepared as provided in this regulation. Except where authority has been otherwise granted, the COE or designee will approve, execute, and distribute instruments to the extent authorized by the SA; otherwise they will be prepared and submitted for execution by direction of the appropriate Assistant Secretary of the Army.

§ 643.13 Military requirement for real estate under grant.

When a military requirement arises for real estate which is being used under a grant of non-Army use, the

withdrawal of availability will be approved at the same level of command as that required for determining the property available for non-Army use. The office responsible for effecting temporary use of the property should be promptly notified of the withdrawal of availability for non-Army use and the latest date the property will be required for military purposes. Termination of the use will be in accordance with the provisions of the grant unless military necessity requires other action. In order to avoid possible claims for damages and in the interest of good community relations and in furtherance of the Army's leasing program, the grantee will be allowed, when practicable, a reasonable time after notice of revocation, to vacate the premises, remove his property and, if required, restore the premises. In controversial cases, or where a claim for damages or litigation is anticipated, HQDA (DAEN-REM) WASH DC 20314, will be notified of the circumstances prior to sending notification of termination of the grant to the grantee.

§ 643.14 Inspection to assure compliance with terms of outgrants.

Commanders will provide general surveillance over areas made available for non-Army use and will advise the DE if and when there are any irregularities. Real estate which is being used for non-military purposes will be inspected at least once each year by the COE, or by his representative, to determine whether grantees or occupants are complyng with the terms of the instruments authorizing use and occupancy, except with respect to easements and licenses for rights-of-way for roads, streets, powerlines, pipelines, underground communication lines and similar facilities. The COE will make compliance inspections for such easements and licenses at least once during each 5-year period. However, the DE will check with installation commanders annually to assure that there are no situations which might need correction prior to the inspection. The installation commander will make interim inspections of all real estate being used for non-military purposes as are necessary for timely observation of the extent of compliance with grant provisions designed to protect and preserve the real estate for military requirements, and will furnish the appropriate DE a copy of a written report of the inspection reflecting findings and recommendations. In order that the grantee's operations not be unreasonably disrupted, the annual compliance inspection made by the DE will be coordinated with the installation commander so that, if feasible, only one inspection will be made. Where necessary, corrective action in accordance with applicable regulations will be taken for the enforcement of the terms of the grant by the responsible officer who granted the use. Overseas commanders are responsible for inspection of real estate under their jurisdiction and necessary corrective action.

§ 643.15 Unauthorized use.

Whenever it is observed that real estate under the control of the DA is being used and/or occupied by private parties without proper authority, corrective action will be taken to cause such unauthorized use to be discontinued or to formalize such use and occupancy by an appropriate grant in accordance with this regulation. In either event, compensation will be obtained for the unauthorized use of such property.

Subpart B—Policy

§ 643.21 Policy—Surveillance.

Installation Commanders will maintain constant surveillance over real estate under their jurisdiction to determine whether any of it is excess to requirements, or may be made available for other Army use, or may be made available for use for other than Army purposes and will process such determinations expeditiously in accordance with the provisions of this regulation. From time to time DOD, DA and GSA surveys will be made pursuant to Executive Order 11954, 7 January 1977, which enunciated a uniform policy for the Executive Branch of the Federal Government with respect to the identification of excess and under-utilized real estate (AR 405–70). Real estate for which is retained for future use will be a requirement which will be disposed of in accordance with AR 405–90. Real estate

which the Army does not currently need but which is retained for future use will be made available to others for use either exclusively or concurrently with the Army. When an installation is in an inactive status, the presumption is that it is available for other military or Federal use or for leasing unless there are cogent reasons that such action should not be taken. The purpose of this rule is to put to beneficial use Federal property, which is not for the time required for its basic use, for the benefit of other Federal agencies, the local economy, or for the benefits accruing to the United States from the income and/or savings of maintenance, protection, repair, or restoration.

§ 643.22 Policy—Public safety: Requirement for early identification of lands containing dangerous materials.

(a) DA will not make available to others any real estate which is contaminated with explosives or with toxic materials or other innately or potentially harmful elements until such elements have been removed or have been rendered harmless, unless the proposed user of the area is aware of the condition of the area and is technically qualified and certified to make use of the area in its contaminated state.

(b) It is imperative that commanders keep records on and have a continuing awareness of the state of contamination of lands by explosives, military chemical or other dangerous materials.

(c) Procedures with respect to action to neutralize or decontaminate the area are set forth in AR 405–90.

§ 643.23 Policy—Preference.

Army real estate under the control of DA which is made available for use for other than Army purposes will be made available for use by other military departments or DOD activities and agencies, other Federal departments, activities or agencies, State or local governmental bodies and other private parties, in that order.

§ 643.24 Policy—Competition.

The use of real estate under the control of DA for private purposes will be granted only after reasonable efforts have been made to obtain competition for its use, through advertising. Advertising is any method of public announcement intended to aid directly or indirectly in obtaining offers on a competitive basis. Advertising may be accomplished by circulating and posting notices and by paid advertising in newspapers and trade journals. The purpose of seeking competition is to afford all qualified persons equal opportunity to bid for the use of the property, to secure for the Government the benefits which flow from competition, and to prevent criticism that favoritism has been shown by officers or employees of the Government in making public property available for private use. Although the lease of Government real estate to civilians employed by the military departments or officers or enlisted personnel of the Armed Forces is not prohibited by law, it is essential that extreme care be exercised to avoid favoritism or the appearance of favoritism. Generally leases to Federal Government personnel will be granted only after competitive bid under the sealed bid method. The provisions of this paragraph do not affect the authority contained in AR 210–10 and 210–50 for furnishing quarters to civilian employees of DA. Also the provisions of this paragraph do not affect the use of Federal facilities by uniformed personnel as may be otherwise provided for. Other exceptions to the advertising policy are as follows:

(a) Granting easements, leases and licenses to public agencies and public utilities.

(b) Granting permits to other Federal agencies.

(c) Leasing cable pairs.

(d) Leases or licenses to utility companies having an exclusive franchise in the area, for space on Government-owned poles for attaching their electric transmission communication lines.

(e) COE is authorized to grant a waiver of competition upon a determination that it will promote the national defense or will be in the public interest or upon a determination that competition is impracticable.

§ 643.25 Policy—Grants which may embarrass the Department of the Army.

The use of property under DA control will not be authorized for any purpose when the proposed use or the revocation thereof might prove embarrassing to the DA.

§ 643.26 Policy—Commercial advertising on reservations.

DA will not authorize the posting of notices or erection of billboards or signs for commercial purposes on property under its control.

§ 643.27 Policy—Environmental considerations.

DA will not authorize the use of real estate, water and other natural resources when such use is not in harmony with the goals and intent of the following legislation and/or similar legislation which establishes a firm Federal policy and provides procedures to enhance the overall environmental quality.

(a) National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4321), (AR 200–1, chapters 1 and 2).

(b) National Historic Preservation Act of 1966 (Pub. L. 89–665, 16 U.S.C. 470–47M, 1970), as amended by 16 U.S.C. 470h, 470i, 470*l*–470n, Supp. 1973).

(c) Federal Water Pollution control Act of 1972, as amended.

(d) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(e) Coastal Zone Management Act of 1972 (16 U.S.C. 1451).

(f) Clean Air Act of 1970, as amended, (42 U.S.C. 1857), (AR 200–1, chapter 4).

(g) Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431), (AR 200–1, chapter 3).

(h) Solid Waste Disposal Act, as amended (42 U.S.C. 3251), (AR 200–1, chapter 6).

(i) Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. 136), (AR 200–1, chapter 6).

(j) Noise Control Act of 1972 (42 U.S.C. 4901), (AR 200–1, chapter 7).

§ 643.28 Policy—Historic and cultural environment.

(a) Executive Order 11593, 36 FEDERAL REGISTER 8921 (Appendix D) provides in part that the Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation; that Federal agencies shall:

(1) Administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations;

(2) Initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures and objects of historical, architectural, or archeological significance are preserved, restored and maintained for the inspection and benefit of the people; and

(3) In consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i) institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural, or archeological significance (AR 200–1, chapter 8 and App. A).

(b) Outgrants will include conditions to assure protection of real estate as contemplated in paragraph (a) of this section.

§ 643.29 Policy—Archeological surveys.

The SA under the authority of 16, 432, may allow the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity upon Army lands by institutions which are deemed properly qualified to conduct such examinations, excavations, and gatherings (AR 200–1, chapter 8).

§ 643.30 Policy—Construction projects and activities; protection of historical and archeological data.

The Archeological and Historical Preservation Act of 1974 (16 U.S.C. 469 *et seq.*) provides for the preservation of historical and archeological data on all Federal or Federally-assisted construction projects or in connection with any federally licensed activities or programs.

§ 643.31 Policy—Flood hazards.

Each Determination of Availability Report will include an evaluation of the flood hazards, if any, relative to the property involved in the proposed outgrant action, pursuant to the provisions of Executive Order 11296, August 10, 1966. DA will not authorize the use of lands in flood plains for habitation purposes or any other use which may be uneconomical, hazardous, or unnecessary.

§ 643.32 Policy—Endangered species.

The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), declares the intention of Congress to conserve threatened and endangered species of fish, wildlife and plants, and the ecosystems on which those species depend. The Act provides that Federal agencies must utilize their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such necessary action to insure that any action authorized by that agency will not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretaries of the Departments of Commerce or Interior, as appropriate, to be critical.

§ 643.33 Policy—Coastal zone management.

(a) The Coastal Zone Management Act of 1972 (16 U.S.C. 1456), directs all Federal agencies conducting or supporting activities directly affecting the coastal zone of a state, to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs. The opinion of the Attorney General of the United States is that Federal lands are excluded from mandatory compliance with the state's coastal zone management program, regardless of the type of Federal jurisdiction exercised thereover. However, it is Army policy that its activities will comply, to the extent practicable, with a state's approved coastal zone management program.

(b) Applications for grants for use of real estate affecting land or water uses in the coastal zone of a state will include a certification that the proposed activity complies with the state's approved program and that applicant's activity will be conducted in a manner consistent with the law.

(c) An activity affecting land or water uses in the coastal zone of a state which will not be conducted in a manner consistent with an approved state program will be exempted from this certification requirement only if the Secretary of Commerce, on his own initiative or upon appeal of the applicant, determines that the activity is consistent with the objectives of the Coastal Zone Management Act or is otherwise necessary in the interest of national security.

§ 643.34 Policy—Public utilities on installations.

(a) Contracting officers, with the approval of Installation Commanders, are authorized to permit the extension of public utilities upon installations, as part of the contract for furnishing to the Government electricity, water, and gas, where such extension is necessary solely to serve the installation and not in part to serve private consumers outside the installation. The above authorization is covered by the provisions of the contract for purchase of utilities services contained in Armed Services Procurement Regulations.

(b) Contracts or agreements for the sale of surplus utilities services as authorized by law or regulations will include similar authority for the purchaser to install and maintain such facilities on the installation as necessary in connection with the sale of such utilities services, in accordance with AR 420–41 and AR 105–23.

§ 643.35 Policy—Mineral leasing on lands controlled by the Department of the Army.

(a) *Acquired lands*—(1) *General.* The Coal Leasing Amendments Act of 1975, hereinafter referred to as the act, amended the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) and permits the Secretary of Interior (SI), with the consent of the Secretary of

Defense, to lease deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium and sulfur which are within acquired lands of the United States which have been set aside for military or naval purposes. The consent requirement is to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered. Leasing is subject to the same conditions as contained in the leasing provisions of the mineral leasing laws (see 30 U.S.C. 351). Authority in this paragraph does not permit leasing of mineral deposits lying in tidelands, submerged lands, nor in certain coastal waters.

(2) Notwithstanding the generality of the foregoing, leasing of coal and lignite deposits is subject to special restrictions. The act permits such leasing, provided the Secretary of Defense concurs, only to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which provides electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.

(b) *Public domain lands.* Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semi-solid bitumen, bituminous rock and gas located on public domain lands under the jurisdiction of the Department of the Army may be leased by the SI pursuant to 30 U.S.C. 181 *et seq.* with the concurrence of the Secretary of the Army.

§ 643.36 Policy—Interim leasing of excess properties to facilitate economic readjustment.

Interim outleasing of excess real property is authorized to lessen the economic impact on the local community, caused by an installation inactivation, closure or realignment. These outleases may be granted to State or local governmental bodies in consideration for care, custody, management and routine maintenance. Income derived from the use of the property in excess of the cost of care, custody, management and routine maintenance will be covered into the Treasury as miscellaneous receipts. The outleasing will generally conform to an economic recovery plan outlined by the Office of Economic Adjustment, OASD (I&L), will require coordination with the DASD (I&H) and concurrence by the GSA. Leases are limited to one year and must be revocable by the Government on 30 days notice.

§ 643.37 Policy—Requests to search for treasure trove.

Section 3755 of the Revised Statutes (40 U.S.C. 310) authorizes the Administrator of the GSA to make such contracts and provisions as he deems necessary to protect the interests of the Government in searches for and sales of treasure trove. All searches and sales authorized by GSA under this statute are subject to the Act for the Preservation of American Antiquities (16 U.S.C. 432) and will only be permitted after consent of the Department of the Army has been obtained.

§ 643.38 Policy—Utility rates.

(a) Rates for utilities furnished by the Army will be in accordance with AR 420–41.

(b) Payments for utilities or services furnished will be deposited to the Treasurer of the United States to the credit of the appropriation from which the costs of furnishing them was paid. Collection for utilities and services furnished by the Army is the responsibility of the officer having immediate jurisdiction over the property in accordance with AR 37–19 and AR 37–27.

§ 643.39 Policy—American National Red Cross.

(a) Title 10 U.S.C. 2670, authorizes the SA to grant revocable licenses permitting the erection and maintenance by the American National Red Cross on military reservations, of buildings suitable for the storage of supplies for the aid of the civilian population in case of serious national disaster, or the occupation for that purpose of buildings erected by the United States.

(b) Installation Commanders will furnish office space and quarters for Red Cross activities and personnel when assigned to duty with the Armed Forces in accordance with AR 930–5.

§ 643.40 Policy—Young Men's Christian Association (YMCA).

Title 10 U.S.C. 4778, authorizes the SA to grant revocable licenses pemitting the erection and maintenance by the YMCA on military reservations, of such buildings as their work for the promotion of the social, physical, intellectual, and moral welfare of the garrisons may require.

§ 643.41 Policy—National Guard use.

Pursuant to the authority contained in 32 U.S.C. 503, the SA is authorized to grant revocable licenses to the States and territories for the use and occupancy of installations or portions thereof by the National Guard. A license may not be granted for the erection of a permanent National Guard Armory without specific congressional authority.

§ 643.42 Policy—Consents for crossing of rights-of-ways and similar interests owned by the United States.

Under the various easement authorities or under the administrative power in cases outside the purview of those authorities, the SA may consent to the granting of an easement by the owner of the servient estate, subject to such conditions as may be required to protect the Government's interest.

Subpart C—Leases

§ 643.51 Additional items concerning leasing.

In addition to the general and policy matters covered in Chapters I and II of Title 32, the following also apply with respect to the leasing of Army real estate.

§ 643.52 Term.

Each lease will be for a period not exceeding five years unless the SA determines that a longer period will promote the national defense or will be in the public interest.

§ 643.53 Consideration.

(a) Unless otherwise authorized by this regulation or directed by the SA, the consideration for a lease of real estate will be the appraised fair market rental value. However, the value of the maintenance, protection, repair, or restoration by the lessee of the property leased, or of the entire unit or installation where a substantial part of it is leased, may be accepted as all or part of the consideration. The value of the maintenance, protection, repair or restoration, when added to the amount of the monetary payment to be made by the lessee, must equal the appraised fair market rental value of the property leased.

(b) Buildings and space may be leased to a State or political subdivision thereof for public school purposes, limited to use for classrooms and closely related academic instructions, through high school level, at no monetary consideration. Where bare land is leased for construction of a school through high school level, the acreage will not exceed criteria established by the appropriate State authority or the Department of Health, Education, and Welfare (HEW), the rental will be $1 for the term of the lease and any renewal thereof. Leases of bare land will be for a term of 25 years, with an option on tenant's part to renew for another term of 25 years. Real estate may also be leased for educational purposes to public educational institutions at a reduced rental, after consultation with the HEW, and taking into account any benefits accruing to the United States through the use of such property. In any event, the lessee will be required to assume the cost of maintenance, protection, repair, or restoration of the property leased and the administrative costs incident thereto.

(c) Lease granted for agricultural, grazing, or haying purposes will have attached thereto the land-use regulations furnished by the installation commander specifying the items required to be performed by the lessee as part of the lease obligations. It is the policy of the DA that land leased for agricultural, grazing or haying purposes be returned to the Government in as good or better condition than when initially leased. The land-use regulations will include those activities of maintenance, protection, repair, or restoration of the property leased which the lessee will be required to perform as part or all of the consideration for

the lease. Generally, an activity will qualify as an offset from rental if it is:

(1) Performed on the leased premises, or when it constitutes a substantial part of the entire rental unit or installation,

(2) Of direct benefit to the installation in its authorized current or mobilization mission, as distinguished from desired programs, or in furtherance of the Army's leasing program,

(3) Generally related to the lessee's use of the leased property. Where all of the above criteria are met, the following activities may be authorized: Control of erosion, conservation of natural resources, and maintenance of the viability of the land for continuing leasing, such as mowing, weed control, seeding, fertilizing, mulching, crop rotation, selected cutting, and soil conservation measures such as terraces, check dams, wells, springs, ponds, title, or open channels or culverts for drainage, firebreaks, inside fencing and cattle guards. Maintenance, protection, repair or restoration of buildings, roads, perimeter fencing, and similar improvements are not authorized as offsets from rental unless the property is leased to and beneficially used by the lessee, or on a rental unit or installation in which the leased premises constitutes a substantial part or as otherwise approved by HQDA (DAEN-REM), Washington, DC 20314. Also, lessee may be required to perform activities in support of recreation and welfare, fish and wildlife, beautification, and esthetic programs and the cost of establishing and maintaining recreation, swimming and fishing areas, wildlife habitats, food plots, and similar activities when the following conditions have been met:

(1) The activities to be offset are in furtherance of the installation natural resources plan as approved by the MACOM.

(2) The overall plan for the term of the lease, has been approved by ASA (IL & FM).

(3) MACOM approval has been obtained for each lease when any activity to be offset exceeds $1,000.

Total of the offsets in any year will never exceed the annual rental.

§ 643.54 Receipts.

Receipts will be deposited into the Treasury as miscellaneous receipts.

§ 643.55 Mandatory revocation clause in lease.

Each lease will contain a provision permitting the SA to revoke the lease at any time, unless it is determined that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event, the lease will be revocable by the SA during a national emergency.

§ 643.56 Taxation of lessee's interest.

The lessee's interest in leased property may be taxed by State or local governments as provided in 10 U.S.C. 2667(e). Each lease will contain a provision that if and to the extent that the property owned by the Government and included in the lease, as opposed to the leasehold interest of the lessee therein, is later made taxable by State or local governments under an act of Congress, the lease will be renegotiated.

§ 643.57 Sublease or assignment.

A lease of real estate will not be subleased or assigned for direct or indirect use by another Federal agency. Except as specifically provided in the lease, a sublease or assignment of the lease will not be authorized without prior approval of HQDA (DAEN-REM), Washington, DC 20314.

Subpart D—Licenses

§ 643.71 Additional items concerning licenses.

In addition to the general and policy matters covered in subparts A and B, the following also apply with respect to the granting of licenses.

§ 643.72 License.

A license is a bare authority to do a specified act upon the property of the licensor without acquiring any estate therein. The principal effect of a license is to authorize an act which in the absence of the licensee would constitute a trespass.

§ 643.73 Term.

The term of a license will be limited to a period reasonably necessary to accomplish the purpose for which the license is being granted, but in no event will the term exceed five years, without the approval of COE.

§ 643.74 Consideration.

When a license is granted under the authority of an easement or leasing statute, the same rules will apply in regard to consideration as is applicable to the granting of an easement or lease under the statute. Since the administrative power may be relied upon for the grant of a license only when such grant is of direct benefit to the Government, such grants may be made without consideration.

Subpart E—Easements

§ 643.81 Additional items concerning easements.

In addition to the general and policy matters covered in subparts A and B, the following also apply with respect to the granting of easements.

§ 643.82 Term.

The term for which an easement is granted will be guided by the type of easement, the period for which the land can be made available and the limitations of the authorizing statute.

§ 643.83 Consideration.

Although the statutes authorizing grants of rights of way or easements do not make it mandatory that compensation be paid to the United States, such grants will reserve consideration in an amount equal to the fair market value as established by recognized appraisal practices. As an exception to this rule, grants to States, counties, municipalities, or political subdivisions thereof, will not require fair market value when the purpose of the easement is to serve the public interest or is to benefit the Federal Government.

§ 643.84 Easement—Grantees relocate or replace needed facilities.

In easement grants, grantees usually will be required to repair and restore damage done to Government land and improvements and to relocate or replace buildings and other needed facilities rendered useless or less useful by the exercise of the easement rights granted. DOD policy requires that in keeping the Army whole, the relocation or replacement of facilities will be limited to those for which there is a continuing requirement. By specific exclusion, establishment of a different category of facility is not authorized. (DODI 4165.12 III C)

§ 643.85 Easement grantees—Payment for removal or destruction of unneeded improvements.

Where a proposed right-of-way will require removal or destruction of improvements which are not required to be relocated or replaced to meet military needs, such improvements will be disposed of as excess property in accordance with AR 405–90, and a condition of the easement grant will be payment for such improvements as follows:

(a) Where the easement grant is to be made at fair market value to entities not entitled to grants of rights of way without charge, the charge for the grant will include the in-place fair market value of the improvements.

(b) Where the proposed grantee is a State or local Government agency normally granted a right of way without charge under Army policy and the grantee's project is subsidized wholly by an agency of the Federal Government, no charge will be made for the improvements thus lost, since any charge made would not reflect a net return to the Government.

(c) Where the proposed grantee is a State or local Government agency normally granted a right of way without charge under Army policy, and the grantee's project is not subsidized, or is subsidized only in part, the charge for such improvements removed or destroyed and not replaced will be the salvage value thereof.

§ 643.86 Easements for various purposes with relinquishment of legislative jurisdiction.

Title 40 U.S.C. 319, and delegation of authority thereunder from the Secretary of Defense authorizes the SA to grant easements and concurrently to

relinquish to the State in which the affected land is located such legislative jurisdiction as is deemed necessary or desirable. Ordinarily, 40 U.S.C. 319 will not be used for easement grants which may be accomplished pursuant to authorities set forth in preceding paragraphs except where retrocession of legislative jurisdiction is intended.

Subpart F—Permits

§ 643.101 Additional items concerning permits.

In addition to the general and policy matters covered in subparts A and B, the following also apply with respect to the granting of permits.

§ 643.102 Permit.

A permit is the temporary authority conferred on a Government agency to use real property under the jurisdiction of another Government agency.

§ 643.103 Term.

A permit may be granted to another military department, a DOD component, or Federal agency for a mutually agreeable period. if the permit is on a permanent or irrevocable basis, it is considered tantamount to a transfer and must be granted under special statutory authority. Where the real property involved is estimated to exceed $50,000 in value, a report must be made to the Congressional Committees on Armed Services, pursuant to title 10 U.S.C. 2662.

§ 643.104 Consideration.

(a) Permits are usually granted on a rent-free basis.

(b) The Army is authorized, however, to charge for space and space-related services provided non-DOD Federal agencies. Charges will be at rates established by GSA for the particular location pursuant to 40 U.S.C. 490 (j) and (k). Exceptions to this policy will be real property and related services provided to an organization which is solely in the support of the installation's mission. (For example: Space assigned to a FAA air controller on an Army airfield; GAO activity auditing installation programs.) Proceeds which are in excess of the actual operating and maintenance costs of providing the service shall be credited to miscellaneous receipts unless otherwise authorized by law. Reimbursement for utilities and services furnished to the permittee is the responsibility of the officer having immeditate jurisdiction over the real estate. Where the use of real estate by a Federal agency under permit is authorized and the correspondence does not include information regarding charges to be made for the real estate, clarifying information will be obtained from HQDA (DAEN-REM), Washington, DC 20314.

(c) Where real property is leased to or otherwise used by the Army and a rental or charge is paid therefor, any use of the real estate, for non-Army use, either under permit or other grant, will provide for reimbursement of a proportionate part of the rental or charge, unless otherwise approved by OCE. Reimbursement is the responsibility of the DE. Any other officer authorizing such use is responsible for notifying the DE of the non-Army use.

Subpart G—Additional Authority of Commanders

§ 643.111 Additional authority.

In addition to authorities and responsibilities set forth above, the following grants may be made by commanders as indicated.

§ 643.112 Army exchange activities.

Use of space and structures by the Army Exchange and its concessionaires is governed by AR 60–10.

§ 643.113 Banks.

(a) The establishment of banks, branch banks, and banking facilities on Army installations is governed by AR 210–135.

(b) The Treasury Department determines whether a banking facility is self-sustaining and notifies the Commander, U.S. Army Finance and Accounting Center.

(c) Banking facilities which are not self-sustaining will be furnished space, utilities and custodial services without charge by the Installation Commander, provided space and services are available from existing resources.

(d) Banking facilities which are self-sustaining will be granted a lease by

the DE, at fair market value, and reimbursement will be required for utilities and services furnished.

(e) A bank building may not be constructed on an Army installation without the prior approval of COE, SA, and DOD.

§ 643.114 Civil disturbances.

Without reference to higher authority, and when it is found to be in the public interest, MACOM and heads of agencies having command responsibility may grant, without consideration, revocable licenses for joint use of active Army and USAR facilities during civil disturbance for not more than 30 days to the National Guard and to municipal, county, and State officials and law enforcement agencies. Licensees must agree that the privileges granted will be without expense to the DA, that the use will be subject to the control of the officer having jurisdiction over the property, that it will remove its property from the premises when the license is terminated, that it will pay the cost of any services furnished to it by the DA, and, if a non-Federal agency, that it will hold the Government harmless from any damages or claims arising out of the use. Where it is proposed to allow such use beyond 30 days, the proposal must be submitted to HQDA (DAEN-REZ) Washington, DC 20314, for approval. Federal task force commanders, acting under instructions from the Chief of Staff, in a civil disturbance control operation may approve requests for the use of installations under their control (ref. AR 500–50).

§ 643.115 Contractors—Permission to erect structures.

Installation commanders are authorized to permit the erection of temporary structures for use solely in connection with a Government contract for construction and related work for the period of the contract and with provision for removal and restoration of the premises upon expiration of the contract; *Provided*, That, in the interest of the United States, any structure suitable for military use may, in lieu of removal, be relinquished to and become the property of the United States. If the structure is to be used for any purpose other than the fulfillment of the contract, application will be made to the DE for such use in order that a proper real estate instrument may be processed.

§ 643.116 Credit unions.

The establishment of credit unions on Army installations is governed by AR 210–24. Installation commanders are authorized to allot space in existing buildings, without charge for rent or services, to any credit union organized under State law or to any Federal credit union organized in accordance with the Federal Credit Union Act, (12 U.S.C. 1770), provided that, in either case, that 95 percent of the membership is composed of Federal employees, including former Federal employees who acquire membership while employed by the Federal Government and retained such membership.

§ 643.117 Hunting, trapping, and fishing.

Applications to hunt, trap, and fish on military reservations are governed by AR 420–74.

§ 643.118 Nonappropriated funds—Authority to permit erection of structures.

The authority of installation commanders to permit structures to be erected on military installations with nonappropriated funds, as well as the title status of each, is defined in AR 60–10 and AR 210–55. Use of existing space and structures for activities of a civilian nonappropriated fund is governed by AR 230–81.

§ 643.119 Licenses incidental to post administration.

Installation commanders may authorize the use of property incidental to post administration which in the absence of such authority would amount to a trespass, such as licenses to merchants to enter the reservation to make deliveries. The authority noted herein may not be used to grant licenses in situations otherwise covered by this regulation.

§ 643.120 Post offices.

Title 10 U.S.C. 4779b, provides that the SA shall assign suitable space for

post office purposes at military posts where post offices have been established. Space assignment will be accomplished by arrangement between the postmaster and installation commander.

§ 643.121 Private organizations on DA installations.

(a) AR 210–1 defines and classifies private organizations, such as thrift shops and child-care centers, located on Army installations and provides policy guidance for their authorization and operation. Installation commanders may authorize the use of available facilities or space to such private organizations, without monetary consideration, when the use is on a nonexclusive basis and subject to immediate termination when possession is required by the installation commander for another purpose.

(b) Where the private organization desires exclusive use of facilities or space, or for a specified period of time, the matter will be considered a leasing action, the lease will be granted by the DE and will provide for payment of a rental consideration. The installation commander will consult with the DE if there is a question whether a proposed use of facilities or space by a private organization should be authorized by the DE under lease or by the installation commander by the issuance of a license.

§ 643.122 Reserve facilities—Air Force and Navy use.

MACOM may approve local agreements with other Army, DOD, and Reserve elements covering temporary use of existing Army Reserve facilities, *Provided, however,* That the DA is reimbursed in proportionate share for the services furnished and that the cost of any alterations that may be desired will be borne by the military service concerned. Although no specific form is prescribed for those operational agreements, the agreements constitute interservice support agreements subject to joint AR 1–35/SECNAV INST 4000.20B/AFR 400.27. Nothing in such joint regulation disallows use of DE outgrants to supplement coverages of interservice support agreements when requested and approved in accordance with this regulation. The terms used in the interservice agreements and/or DE outgrants will be those acceptable to the commands concerned. Agreements, however, which provide for the exclusive use of such property by the Air Force or Navy Reserve, or which involve a transfer of funds between services for other than minor utility services, or which involve an increase in personnel strength, or other complications, will be routed to the appropriate DE for execution of a formal permit.

§ 643.123 Reserve facilities—Local civic organizations.

In order to promote community relations in areas where Army Reserve Centers have been constructed, local civic and similar nonprofit organizations may be permitted to use the armory facilities during such periods that will not cause any interference with the primary use thereof for the administration and training of the Reserve components of the Armed Services of the United States. Procedures and policy are outlined in AR 140–488.

§ 643.124 Rights-of-way for ferries and livestock.

Installation commanders are authorized to grant permits for the landing of ferries and driving of livestock over military reservations under authority of 10 U.S.C. 4777.

§ 643.125 Trailer sites.

(a) Installation commanders are authorized to grant revocable leases to military personnel and civilian personnel qualified to occupy public quarters for use and occupancy of individual trailer sites within approved trailer camp areas, and to revoke or renew such leases. (See AR 210–50.) Leases will be granted pursuant to 10 U.S.C. 2667. Necessary utilities will be provided on a reimbursable basis. In no event will the terms of the lease exceed a period of 2 years. DA Form 373 (Lease or Trailer Sites) will be used exclusively for this purpose.

(b) Leases may be revoked for nonpayment of rent, or breach of any condition of the lease or military necessity.

(c) Rents will be collected locally and turned over to the nearest Army Finance and Accounting Officer for deposit in accordance with procedure set forth in AR 37–103. A copy of the Cash Collection Voucher (DD Form 1131) will be forwarded to the appropriate DE.

§ 643.126 Transportation licenses.

Installation commanders are authorized to grant revocable licenses and to revoke such licenses in the name of an by authority of the SA, for bus and taxicab service on installations. The following policy will be observed in granting such licenses; however, if real estate is required to be leased in accordance with paragraph (e) of this section, no commitment will be made to grant licenses until approval is received for the lease.

(a) One or more licenses (revocable at will and for a period not to exceed 5 years) may be granted, based upon the free competitive proposals of all available companies or individuals.

(b) DD Form 694 (Transportation License Military Reservation) will be used for this purpose.

(c) Only duly licensed operators will be permitted to operate on installations.

(d) No distinction will be drawn between taxicab and bus transportation.

(e) If use of Government property is desired for such purposes as at bus station, waiting rooms, storage space, offices in connection with the proposed transportation service, application for a lease will be forwarded to the appropriate DE for processing.

(f) Licenses may be revoked by the installation commander for breach of any condition of the license and for military necessity.

(g) The installation commander will furnish a copy of each such license, through channels, to the MACOM or to the head of the agency having command responsibility.

§ 643.127 Quarters.

The assignment and rental of quarters to civilian employees and other nonmilitary personnel will be accomplished in accordance with AR 210–50. Responsibility of the Corps of Engineers for the establishment of rental rates for quarters rented to civilian and military personnel is set forth in AR 210–12.

§ 643.128 Veterans' conventions.

Without reference to higher authority, MACOM may lend certain Army real property (including the use of unoccupied barracks) to national veterans' organizations for use at State or national conventions or for national youth, athletic, or recreational tournaments sponsored by those organizations in accordance with AR 725–1.

§ 643.129 Youth groups.

(a) Installation commanders may grant revocable-at-will licenses for one-time use, or for intermittent or continuing use of available meeting room facilities, without monetary consideration, to on-post youth groups such as the Boy Scouts, Girl Scouts, and Little League.

(b) Installation commanders may grant revocable-at-will licenses for one-time use, or for intermittent or continuing use, to off-post youth groups such as the Boy Scouts, Girl Scouts, and the Little League for nonexclusive use of recreational areas or unimproved land areas within military reservations for recreational or camping purposes. Licenses will be granted for up to a period of 1 year without monetary consideration and will provide for a hold-harmless clause with respect to any and all claims against the Government and will require the repair of any damage or destruction resulting from such use.

§ 643.130 Joint Carrier Military Traffic Offices (JAMTO, JBMTO, JRMTO, SAMTO).

Installation commanders will furnish office space without charge for JCMTO offices established in accordance with AR 55–355.

PART 644—REAL ESTATE HANDBOOK

Subpart A—Project Planning

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