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excess or surplus, but will not be decontaminated or dedudded prior to the end of the term, the leasehold condemnation proceeding will be extended beyond that date. In reporting leasehold condemnation cases to be extended within the categories mentioned in this paragraph, full information as to the necessity for extensions in each case should be furnished DAEN-REA-C.

(4) Specific authorization for deposit of funds in condemnation leasehold cases will be issued to Division and District Engineers by the Chief of Engineers.

(b) *Termination of leasehold condemnation proceedings.* If the need for all or part of the land included in a leasehold condemnation proceeding should terminate prior to the expiration of the term condemned, in the case of fixed term estates, or prior to the expiration of the right to renew by filing notice of extension, the Division or District Engineer, upon notification by the using service that the land is no longer needed, shall advise DAEN-REA-C accordingly. Prompt action will be taken by the Division or District Engineer to comply with the applicable requirements of subpart I (to be published) relative to screening real property excess to one component of the Department of Defense with all other components and Federal agencies outside of the Department of Defense. Where restoration is involved, a report will be furnished DAEN-REA-C setting forth the status thereof.

(c) *Report to close leasehold condemnation cases.* When the term condemned has expired or all interests have been terminated and all interests have been disposed of by final judgment, the Division or District Engineer will so advise DAEN-REA-C in order that the case may be closed. Report in accordance with §644.119(b) shall be furnished and shall also include a statement that the issue of restoration has been settled.

ACQUISITION BY LEASING

SOURCE: Sections 644.131 through 644.142 appear at 44 FR 31116, May 30, 1979, unless otherwise noted.

§ 644.131 General.

Sections 644.131 through 644.142 outline the procedures of the Corps of Engineers for the leasing of real estate and interests therein for military and civil works purposes. They are applicable to all division and District Engineers having real estate responsibilities. To the extent practicable, these procedures will be followed by overseas commanders, in conjuction with the provisions of AR 405–10, Chapter 3. In general, these procedures also apply to the leasing of land and improvements for other Government agencies which authorize the Corps to acquire leasehold interests.

§ 644.132 Authority.

(a) Authority to lease real property interests for the Department of the Army in the United States, the Commonwealth of Puerto Rico, and the Virgin Islands is derived from annual appropriation acts.

(b) Title 10 U.S.C. 2675 authorizes the acquisition by lease, in any foreign country, of structures and real property relating thereto that are needed for military purposes. Leases under section 2675 may not be for a period of more than five years, except that a lease under this section for military family housing facilities and real property relating thereto may be for a period of more than five years but may not be for a period of more than ten years.

§ 644.133 Responsibilities.

(a) The Corps is responsible for acquiring space in buildings, or land, or both land and buildings, under its own authority or through the General Services Administration (GSA) in designated urban centers, for the Departments of the Army and Air Force; Department of the Navy, including the Marine Corps, for recruiting and main stations; Department of Energy and the Nuclear Regulatory Commission, excluding space in GSA urban centers; National Aeronautics and Space Administration, as requested; and other agencies, such as the Department of Defense, upon request. In carrying out these responsibilities, Division and District Engineers will:

(1) Furnish staff supervision to using services on all leasing matters, as well as technical assistance and guidance.

(2) Develop plans and studies, usually in the form of Lease Planning Reports, for commanders of using services when appropriate.

(3) Make recommendations to the using services and/or the Chief of Engineers on important lease and lease planning matters.

(4) Report controversial or unusual leasing matters to HQDA (DAEN-REA-L) WASH DC 20314 by the submission of a summary of the facts, copies or proposed lease documents, and other data, together with recommendations thereon.

(b) In accordance with Reoganization Plan No. 18 of 1950 (40 U.S.C. 304c) and under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471), the Public Buildings Service of GSA assumed all functions with respect to the acquisition by lease of general-purpose space; the assignment and reassignment of such leased space and of Government-owned space; and the operation, maintenance, and custody thereof in selected urban centers. The Administrator, GSA, is authorized to assign and reassign office space in the United States upon his determination that such assignments or reassignments are advantageous to the Government in terms of economy, efficiency, or national security after consulting with the heads of the executive agencies concerned.

(c) Reorganization Plan No. 18 also provided that the Administrator may delegate any function transferred to him to the head of any agency of the executive branch of the Government.

(d) Reorganization Plan No. 18 did not transfer to the Administrator any function with respect to:

(1) Buildings or space in buildings located on a military installation, or similar facility of the Department of Defense unless a permit for its use shall have been issued by the Secretary of Defense, or his duly authorized representative; or

(2) Space in Government-owned or leased buildings utilized for special purposes and not generally suitable for use by other agencies.

§ 644.134 Definitions.

(a) General-purpose space is space in buildings, including land incidental thereto, suitable for the general use of Government agencies, including but not limited to office space, general storage space, inside parking space, and warehouse space.

(b) Special-purpose space is space in buildings, including land incidental thereto, wholly or predominantly utilized for the special purposes of an agency, and not generally suitable for general-purpose use, including but not limited to hospitals, housing, and laboratories.

(c) Initial alterations are any improvements, additions, repairs or structural changes which are necessary to adapt leased premises or facilities to needs of the using service and which are approved prior to occupancy.

(d) Subsequent alterations or upgrades are any improvements, additions, repairs or structural changes which are found to be necessary to further adapt leased property to the needs of the using service after occupancy.

(e) Temporary improvements are those which can be removed without damage either to the property installed or the leased property, and to which the Government retains title.

§ 644.135 Lease authorization and approvals.

(a) *Title 10 Reports.* Under the provisions of 10 U.S.C. 2662, a lease proposal or renewal with an estimated annual rental in excess of $50,000 (gross rent as recited in the lease or for each project covered by one or more leases) must be reported to the Armed Services Committees of Congress. The General Services Administration (GSA) charges a Standard Level User Charge (SLUC) for furnishing space. For title 10 reporting purposes, where GSA leases space at Corps request, the SLUC figure, if greater than the gross contract rental figure, shall control. For all leases which require title 10 clearance, the Division/District Engineers will prepare and submit an Acquisition Report to HODA (DAEN-REA-L), WASH DC 20314 in the format shown in Figure 5–10 in ER 405–1–12. The report will support an

action to obtain approvals from the Assistant Secretary of the Army (Installations, Logistics and Financial Management) and the Deputy Assistant Secretary of Defense (Installations and Housing) for the proposed lease prior to its submission to the Committees, and will serve as a basis for a hearing before the Real Estate Subcommittee of the House Armed Services Committee. Draft acquisition report pursuant to title 10 for a lease renewal should be submitted at least 12 months in advance of the termination date of the lease. An explanation for any delay in forwarding the draft acquisition report is required in the transmittal letter if lease terminates prior to one year. Supporting data for this report will include the following:

(1) The geographical area in which the availability of Government-owned space was surveyed, together with reasons for limiting the area. The mission is to be set forth in detail, along with the reason(s) why space in this particular geographical area is essential to the performance of the mission.

(2) Current and required space (including parking) for each using service. For GSA leases the square feet should be the same as reported on the SLUC. Corrected square feet may be reported if a letter of concurrence from the appropriate GSA Region is provided.

(3) Statement covering all Government-owned buildings and facilities under the control of the military departments in that area, together with the reasons why each was rejected. Even though no space is available, a list of the installations in the area will be furnished.

(4) Statement from (GSA) indicating that no space is available to that agency and other Federal agencies in the area or, in the alternative, a list of space that is available, together with reasons why the space is not acceptable to the using service.

(5) Identification of the headquarters and personnel making the determination that any available Government-owned space is not suitable.

(6) Original request, signed by the responsible head of the using agency that action be taken to obtain required clearances under 10 U.S.C. 2662. The using service shall advise whether or not a long-range use is contemplated.

(7) A statement of the current and anticipated contract rentals and current and anticipated SLUC for GSA leases. The SLUC should be as reported by GSA, unless an explanation is provided.

(b) *The Economy Act.* Section 322 of the Act of Congress approved 30 June 1932, as amended (40 U.S.C. 278a) provides that no appropriation shall be obligated or expended for the rent of any building or part of a building to be occupied for Government purposes at a rental in excess of the per annum rate of 15 percent of the fair market value of the rented premises at date of the lease under which the premises are to be occupied by the Government, nor for alterations, improvements, and/or repairs of the rented premises in excess of 25 percent of the amount of the rent for the first year of the rental term, or for the entire rental if the full term is less than one year. The provisions of section 322, as applicable to rentals, shall apply only where the rental to be paid shall exceed $2,000 per annum.

(c) *Exception to Economy Act.* The Act of Congress approved 28 April 1942 (40 U.S.C. 278b) provides that 40 U.S.C. 278a shall not apply during war or a national emergency declared by Congress or by the President to such leases or renewals of existing leases of privately-owned or publicly-owned property as are certified by the Secretary of the Army or the Secretary of the Navy or by such person or persons as he may designate, as covering premises for military or civilian purposes necessary for the prosecution of the war or vital in the national emergency. The provisions of the National Emergencies Act, Pub. L. 94–412 (90 Stat. 1255), 14 September 1976, shall not apply to the powers and authorities conferred by 40 U.S.C. 278b and actions taken thereunder.

(d) *Federal Property and Administrative Services Act.* The Administrator, GSA is authorized by 40 U.S.C. 490a(8) to alter and improve rented premises without regard to the 25 percent limitation of 40 U.S.C. 278a upon a determination by the Administrator that the alterations and improvements are advantageous to the Government in terms of economy,

efficiency, or national security, and that the total cost of the proposed work to the Government for the expected life of the lease shall be less than the cost of alternative space which needs no such improvements.

(e) *Certificates of Necessity.* Department of the Army requests for Certificates of Necessity pursuant to 40 U.S.C. 278b will be forwarded to the Assistant Secretary of the Army through DAEN-REA-L. In any case requiring the issuance of a Certificate of Necessity, the amount requested will be sufficient to provide for all improvements which can be foreseen and that will be required during the term of the lease. Should unforeseen, essential requirements arise at a later date, an additional Certificate of Necessity to cover such work will be necessary. It is required that the using service furnish Division or District Engineers with a request for a Certificate of Necessity, explaining the circumstances, followed by a statement that the continued use of the leased premises, or the work to be performed, as the case may be, is vital in the national emergency. All requests by Division and District Engineers will include a completed ENG Form 869–R, 15 percent Valuation Certificate.

(f) *Approval—Chief of Engineers.* (1) The Chief of Engineers is authorized to approve leases where proposed temporary construction to be placed on land by the Government has an estimated cost equal to or in excess of the current market value of the property, or where the estimated rentals to be paid in the future, plus the cost of restoration, would exceed 50 percent of the current market value of the property.

(2) Leases, renewals, or lease extensions, which are controversial, unusual, or inconsistent with existing policies, require the approval of the Chief of Engineers.

(3) Any lease involving clearances by higher authority will be submitted to HQDA (DAEN-REA-L) WASH DC 20314.

(4) Leases, renewals, or lease extensions of industrial properties, other than for bakeries, laundries, and drycleaning facilities, are to be submitted to DEAN-REA-L for prior approval.

(5) Division and District Engineers, and Chiefs of the Real Estate Divisions, are authorized to perform emergency maintenance and repairs to leased premises not in excess of $500 where lessors refuse to perform, or under such circumstances that the lessor cannot perform. Where the cost exceeds $500, approval by DAEN-REA-L is required. The Comptroller General has ruled that where the lessor is obligated to perform maintenance and repairs under the terms of the lease and after demand of and refusal by the lessor, the Government makes such repairs in order to utilize the property to the fullest extent, the cost should be withheld from rental payments under the lease as soon as possible after work is completed (15 Comp. Gen. 1064). However, no rental payments will be withheld and no repairs made after demand and a refusal by the lessor, without prior approval of DAEN-REA-L.

(g) *Division and District Engineer Authorization.* (1) Division Engineers and their Chiefs of the Real Estate Division have been delegated, without authority to redelegate, leasing authority to approve leases where the annual rent, excluding services and utilities, unless said services and utilities are included in the recited rental consideration, is in excess of $25,000, but not in excess of $50,000. The $50,000 limitation will be strictly observed because of the reporting requirements under the provisions of 10 U.S.C. 2662.

(2) District Engineers and their Chiefs of the Real Estate Divisions are authorized to approve leases wherein the rental excluding utilities and services, unless included in the recited rental consideration, does not exceed $25,000 per annum.

(3) Except for space in the National Capital Region, Division and District Engineers are authorized to process all requests for the assignment of space in Government-owned buildings or leased space in the GSA urban centers to the regional GSA office having jurisdiction.

§ 644.136 Leasing guidelines.

Division and District Engineers, and the Chiefs of the Real Estate Divisions,

are authorized to execute leases, or renewals of leases, negotiated in accordance with the procedures expressed herein, upon receipt of a proper request from an authorized command, service, or agency, subject to any required approvals or clearances. When there is no Real Estate Division, as such, but the Division or District Engineer has responsibility for leasing activities, he may delegate this authority to the officer or civilian in charge or real estate activities.

(a) *Leasing requests.* Requests for space or land will be received by the Chief of Engineers, or the appropriate Division or District Engineer. Requests will include the data outlined in AR 405–10 (para 2–2c). Division and District Engineers will coordinate space or land requirements with appropriate commanders to assure responsive lease processing. If required, a Lease Planning Report, or narrative report covering essential information, will be furnished the using service for review and recommendations. Funding requirements, usually in the form of fund citations, will have been met by the using service prior to lease execution. If approvals by higher authority are required, the Division or District Engineer will initiate appropriate action to obtain the necessary clearances.

(1) *Army Commands.* Upon receipt of a request from an Army Command, negotiations for obtaining acceptable leases will be carried to completion in accordance with present procedures for military leases.

(2) *Air Force.* Upon receipt of a lease request approved by Headquarters, U.S. Air Force, or an Air Force major command, the appropriate Division or District Engineer will negotiate and lease the required property. The provisions of AFR 87–1 prescribe the Department of the Air Force policies and procedures that are to be followed.

(3) *National Guard.* All requests for the leasing of facilities for National Guard purposes will emanate from the Chief, National Guard Bureau. Army National Guard leasing requirements will be transmitted through DAEN-REZ-R to DAEN-REA-L. Air National Guard requirements will be transmitted to DAEN-REA-L through Headquarters, U.S. Air Force.

(i) Upon receipt of authority from the Chief of Engineers, negotiations will be conducted for obtaining an acceptable lease, in accordance with the approved lease request. The appropriate United States Property and Fiscal Officer generally makes separate service contracts for utilities, except sewage disposal, and services, and is responsible for the maintenance of all buildings used exclusively by the Air National Guard. Representatives of the Corps of Engineers do not participate in obtaining contracts for utilities and services. In cases where such a contract is impracticable, the lease may include any and all utilities and services as part of the rental consideration, with the cost of the various services and utilities to be itemized. The ''use clause'' in the lease will provide for occupancy of the premises for ''Government purposes''. The wording, ''For use by the Air National Guard and/or United States Air Force, and, in time of war or national emergency, by other units of the Armed Forces of the United States or for any other use by the Federal Government,'' will be acceptable if it is not possible to insert the for ''Government purposes'' provision.

(ii) Leases made by representatives of a State with private parties for use of premises by the National Guard of the State involved, under which State funds are used for rental payments, are not the responsibility of the Division or District Engineer.

(4) *Department of Energy/Nuclear Regulatory Commission.* Space is acquired by these agencies direct from GSA in the designated urban centers pursuant to Reorganization Plan No. 18. In instances where general purpose space is not obtained through GSA and instances involving the leasing of special-purpose space, managers of field offices of subject agencies are authorized to initiate requests to Division or District Engineers for the leasing of properties where the net per annum rental does not exceed $50,000. Leasing of properties where the net rental per annum exceeds $50,000 requires the prior approval of the appropriate agency head, *i.e.*, the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, or their designees.

(5) *Metropolitan Washington, DC.* All requests for leased space in the National Capital Region will be processed in accordance with DOD Instruction 5305.5.

(b) *Requirements survey.* The availability, use, and adaptability of property owned by the Government, whether under control of the GSA or other agencies, shall be thoroughly explored before additional space is leased, or existing leases are renewed, or construction commenced. Particular attention is to be given to the availability of space, or land, at military reservations, camps, posts, or stations.

(1) A statement covering the nonavailability of Government-owned space, or if such is available and not suitable, reasons why it is not suitable, for occupancy by the requesting using service, should be made for each lease executed by the Corps of Engineers, excluding family housing leases.

(2) Suitable privately-owned space shall be acquired only when satisfactory Government-owned space is not available. Rental charges will be consistent with prevailing rates in the community for comparable facilities.

(3) The quality of office space for Government occupancy shall be appropriate for the efficient and economical performance of required operations, affording employees safe, healthful and convenient facilities.

(4) Full consideration shall be given to the efficient performance of the mission and programs of the using service.

(c) *Government-owned and General Services Administration furnished space.* If Government-owned space is available, the Division or District Engineer will inform the using agency, and details of occupancy will be developed. If it is necessary for GSA to lease space, the Division or District Engineer will make a careful review to determine if there are any statutory or regulatory limitations involved. If so, appropriate action will be taken to satisfy the limitations. During the processing of all GSA space assignments and leases, the Division or District Engineer is the only official contact representative with GSA. This procedure is to be emphasized at all time with the using service.

(1) The Division of District Engineer will submit a Standard Form 81, Request for Space, to the appropriate GSA Regional Office for space assignment in urban centers under the jurisdiction of GSA. The requirement to this form applies to lease renewals or lease supplements, and for space assignments in Federal office buildings. Excluded from this procedure is a proposed space assignment in the National Capitol Region.

(2) Except for the acquisition of general-purpose space of 2,500 square feet or less, outside the designated urban centers, and special-purpose space of 2,500 square feet or less, irrespective of the location, the need for any type of building space will be made kown to the appropriate GSA Regional Office by filing Standard Form 81, Request for Space.

(3) The designated urban centers are listed in Figure 5–11 in ER 405–1–12.

(d) *Advertising.* As a general rule, procurement of space will be by formal advertising. However, in leasing certain types of premises where only one location will serve the Government's purpose, such as municipal airports, recruiting stations, and similar facilities, negotiations without advertising are permissible. In instances where building space is needed and the requirement cannot be met through the use of existing buildings, there must be advertising to solicit bids for the furnishing of the space. In every instance, it is essential that efforts be made to seek competition. For each lease, a statement will be prepared concerning competition in the solicitation for space or land and Standard Form 1036, Statement and Certificate of Award, will be used. Where specific space or land is needed, and competition is therefore not involved, the facts and circumstances will be fully explained and such explanation will be made a part of the lease file for future reference.

(e) *Appraisals.* Appraisals are required as a basis for making rental determinations in all leases except those for a nominal consideration. At the discretion of the Division and District Engineers, and the Chiefs of the Real Estate Divisions, formal or detailed appraisals

can be dispensed with for leases wherein the annual rent does not exceed $5,000. Where the rental of a building or part of a building, or family housing unit, exceeds $3,600 per annum, excluding services and utilities, it may be necessary to estimate the fee value of the property contemplated for leasing to determine whether or not the rental rate is in excess of 15 percent of the fee value of the property. For family housing leases, the opinion of fee value will be in short summary form and will be supported by general evidence of comparable values of the unit to be leased. If the proposed annual rental, excluding services and utilities, of a family housing unit exceeds 15 percent of the estimated fee value, the unit will not be leased.

(f) *Determination of valid interest.* Persons executing leases for and on behalf of the United States of America will satisfy themselves, before executing leases, that the prospective lessors have an interest in the real estate which will assure the validity of the lease. Where leased lands are used as a site for contruction, the land records of the county will be examined by a staff attorney familiar with land title records, who will execute a certificate that he has examined the said records and that title is vested in the lessor, subject to the infirmities, liens and encumbrances noted in the certificate. In lieu of such examination, a certificate from the Register of Deeds, County Recorder or other qualified officer is acceptable. If considered advisable in unusual cases, title evidence may be obtained from commercial sources.

(g) *Outstanding rights and damages.* (1) Where the land is subject to outstanding oil, gas, mineral, or similar interests, the Division or District Engineer will determine, from the appropriate command, in advance of the consummation of the lease, whether the continued exercise of the mineral or outstanding rights will interfere with the contemplated use of the premises.

(2) Where buildings, structures, or growing crops are located on land to be leased, a determination will be made by the Division or District Engineer, in coordination with the appropriate command, as to whether they will interfere with the use of the premises.

(3) Where the lessor will not be permitted to harvest crops or remove improvements and timber which will be destroyed by the Government, the appraised value thereof will be determined, and such amount will be included in the rental for the initial term of the lease, together with an express provision relieving the Government of restoration.

(4) Leases of land for bombing, artillery, rifle ranges, and other extraordinary usage will specify that the leased premises are to be used for such purpose, and an effort will be made to include in the lease a provision waiving restoration and claims for damages, particularly where the premises are wastelands or unproductive.

(5) Where the lessor will not consent to a waiver of restoration, the estimated value of such damage, if it can be determined in advance, will be included in the rental for the initial term of the lease, and the lease will contain an express provision relieving the Government from responsibility for restoration.

(6) If restoration is not waived, and the damages cannot be determined in advance, a provision may be included in the lease to the effect that the rental payments do not include compensation for damages arising from the use of the premises for the purpose leased and that, upon termination of the lease, the damages, mutually determined, will be paid by supplemental agreement to the lease. In event the amount of the loss or damage cannot be mutually determined, the lessor may file a claim for the alleged loss or damage in accordance with subpart H.

(h) *Services and utilities.* Services, such as janitorial, heat, air conditioning, light and water, should be included in leases for building space wherever possible. Whether services are paid for as part of the rent or by a service contract, the time period for furnishing heat, air conditioning and light, *i.e.*, usual business hours, 24-hour basis, Saturdays and Sundays, should be clearly stated.

(i) *Other contracts.* The negotiation and execution of contracts not involving an interest in real estate are the responsibility of the services concerned.

(j) *Condition surveys.* (1) Whenever possession of any premises is acquired by lease or other agreement, or by condemnation for a term of years, the Division or District Engineer will cause a survey and inspection of the condition of the real and personal property to be made as of the time the Government takes possession.

(2) The survey and inspection required above will be made jointly with the lessor or his duly authorized representative. The report will be signed by both parties.

(3) The initial survey report must be made with great care since it is the basis for future restoration claims by a lessor. The use of photographs is encouraged. Full explanatory data covering condition of the premises will be added to the report if, in the opinion of the Chief, Real Estate Division, a useful purpose will be served thereby. The survey report of real property, and the inventory and condition report of personal property, will be made with care, as the condition reflected as of the date of initial occupancy will be compared with the condition shown by the terminal reports made upon vacation of premises.

(4) A survey is not required of unimproved land where an appraisal has been made and the condition of the land is set forth by the appraiser and made a part of the record.

(5) A survey will be made wherever property of another Federal agency is used, with the exception of post offices and Federal buildings. In the event privately-owned buildings, crops, or other property, are on the Federal property, a report will be made outlining the terms and conditions under which they were placed thereon, and the value thereof will be appraised as of the date of possession.

(6) Normally, ENG Forms 3143 and 3143A, Joint Survey and Inspection of Condition of Government Leased Property, are adequate for the joint survey and inspection. In certain cases, narrative reports may, at the discretion of the Division or District Engineer, be considered preferable; however, local forms will not be developed for this purpose.

(k) *Possession.* Possession of real property will not be taken until required approvals and clearances are obtained and a lease is executed. When requested by an appropriate command, rights-of-entry for exploration and survey, or construction, will be obtained in accordance with instructions in §§ 644.155 through 644.157.

(l) *Condemnation of leaseholds.* Where the required leasehold interest cannot be acquired by a negotiated lease, the recommendation of the Division or District Engineer for the institution of condemnation proceedings will be submitted to HQDA (DAEN-REA-C) WASH DC 20314, in accordance with § 644.121, setting forth the negotiations that have been conducted with the property owner(s) and all other factors supporting the recommendation.

(m) *Decease of lessor.* (1) Any claim on account of death of a lessor (except uncurrent depository check claims) may be settled without submission to the Chief of Engineers where no doubt exists as to the amount and validity of the claim or as to whom payment may be made under the laws of the domicile of the decedent.

(2) Any claim for rent or services due a deceased lessor which is considered doubtful will be forwarded to HQDA (DAEN-REM) WASH DC 20314 in accordance with subpart H.

(n) *Recording leases.* If the property is located in a State requiring the recording of leases, all statutory requirements will be met. Leases, and supplemental agreements prior to termination, involving property upon which substantial Government improvements are to be constructed, will be recorded in all cases.

(o) *Change in ownership.* (1) When the title to premises leased to the Government is transferred, the contracting officer shall satisfy himself that the new owner has a valid interest in the premises covered by the lease, and thereafter enter into a supplemental agreement between the old and new owners and the Government, for distribution in the same manner as the original lease.

(2) Upon being notified or otherwise determining that a foreclosure proceeding has been filed against the leased premises, or that the enforcement of a deed of trust or mortgage is

imminent, the Division or District Engineer will take such action as is appropriate under State laws for protection of the United States. This would consist of filing by the United States Attorney with the court, or with the trustee, receiver, or commissioner, as the case might be under local law, of a notice of the Government's lease on the property, with request that the foreclosure proceedings be made subject thereto. If the proceeding is made subject to the lease, an abstract of such proceeding will be made, certified by a staff attorney, and distributed in the same manner as the original lease. If considered advisable, a supplemental agreement to the old lease will be made with the new owner; or a superseding lease may be executed and distributed. If the proceeding results in vesting title in a new owner, free and clear of the Government's lease, attempt will be made to negotiate a new lease; if this fails, condemnation action will be taken sufficiently early to protect the interests of the United States. Negotiation and condemnation in this latter type of situation must be based on a current appraisal.

(p) *Supplemental agreements.* Modification of existing leases will be in the form of supplemental agreements and will be prepared, executed, and distributed in the manner prescribed for the original lease. Where a supplemental agreement provides for an increase in space at an increased rental, the supplemental agreement should contain appropriate recitals of this fact, and provide that the Government, thereafter, may, upon 30 days notice, partially reduce, or discontinue, the use of the space covered by either the supplemental agreement, the basic lease, or both. Supplemental agreements enlarging or reducing space will show the total area and rental comprising the basic lease and preceding supplemental agreements.

(q) *Annual review of leases.* Annual review of leasing requirements and space assignments from GSA are to be initiated by the Division or District Engineer not later than one year before the end of the lease term for each lease.

(1) Special attention will be given by Division and District Engineers to leases which expire by their own terms and continued occupancy is required at annual rentals of $50,000 or more. These leases require approval by the Department of Defense and reporting to the Armed Services Committees of the Congress by the Chief of Engineers. An Acquisition Report together with full justification, as set forth in § 644.135(a), in support of each lease (or project covered by more than one lease) must be furnished. For leases in which it is not clear whether Title 10 reporting is required, DAEN-REA-L will be informed of the facts for decision. Attention will be given also to existing leases having annual rentals between $30,000 and $50,000. It is probable that current appraisals will indicate annual rental rates in excess of $50,000 and, therefore, require a title 10 report.

(2) If the using command anticipates that there will be further need for the leased property, and the total estimated rentals to be paid by the Government, excluding utilities and services, for the additional period, plus the cost of restoration, will exceed, 50 percent of the estimated current market value of the property, DAEN-REA-L will be informed of all details in order that the review required by paragraph 1–8, AR 405–10, may be made. Only estimated future rent payment is to be considered and not the rental paid in the past for the property. In applying this formula, if the period of future use cannot be ascertained but it is likely that a property will be used for a long period of time, use a period of five years for calculations.

(r) *Lease renewals and extensions.* (1) Lease entered into under authority of the annual appropriation acts may include a provision for automatic renewal after expiration of the initial term subject to the availability of appropriated funds. However, if the property is still needed after lease expiration, a new lease is required and the old lease will not be extended by supplemental agreement for the new term. Where the lease requires notice in writing to be given to the lessor to exercise the option of renewal, notice will be served by the use of ENG Form 221, Notice of Renewal of Contract or Lease, in accordance with the terms of the lease. The notice, properly addressed,

will be sent by certified mail, with return receipt requested. Adequate time, in addition to the number of days specified in the lease, will be allowed for delivery to, and receipt by, the lessor. The Division or District Engineer will maintain adequate records to assure prompt service of notice to avoid the lapse of leases.

(2) No lease will be renewed or kept in existence unless it has been administratively determined, through advertising or otherwise, that other suitable property at a lower rental is not obtainable. At all times, and in particular during the lease renewal review period, the Division or District Engineer will take cognizance of the availability of property in the area of the using service that is Government-owned, or property under GSA control.

(s) *Payment of rents.* (1) One of the most important factors involving good relationships between the Government and the lessor is the prompt payment of the rent. Under existing regulations, the rent is paid by the using commands. The Division or District Engineer makes rental payments for leases when the Corps is the using service and for recruiting facilities, since the Chief of Engineers is the Department of Defense Executive Agent for recruiting facilities acquisition. It is therefore appropriate for the Division or District Engineer to inquire periodically of the using commands whether delays in processing payments are encountered. If payments are not being made within seven working days after payment is due, appropriate action will be taken to correct the delay; if no action is taken after a reasonable time allowed for correction of procedures, DAEN-REA-L will be informed fully of the facts and an investigation will be conducted.

(2) Prior to payment, the Division or District Engineer, or his designee, will certify for submission to the Disbursing Officer that the leased property was occupied or available for use. The following certification, contained on Standard Form 1166, Voucher and Schedule for Payments, is used:

I hereby certify that the leases identified hereon were in effect for the month (or other period) indicated, and that the space was occupied, or available for use, by the Department of the Army.

§ 644.137 Maneuver agreements.

Joint training exercises or maneuvers are conducted by elements of the Department of Defense. Land use requirements vary with the exercise objectives and the force elements which participate. The Corps participates in the planning and acquires rights to use land and other facilities for Department of the Army exercises. The current Memorandum of Understanding by Department of the Army, United States Readiness Command (USCINCRED), and United States Army Forces, Readiness Command (USCINCARRED) on acquisition of maneuver rights for United States Readiness Command (USREDCOM) Joint Training exercises is included as Figure 5–13 in ER 405–1–12. This Memorandum covers timing of requests for preliminary surveys, real estate studies, funding and acquisition of maneuver rights. The Corps also responds to requests from other Department of Defense commands for maneuver rights, and the same procedure is envisioned although no Memoranda of Understanding have been entered into. Upon receipt of a request for real estate services, an estimate of the funds required for the report should be forwarded to the using command.

(a) *Procedures.* The appropriate Division or District Engineer will be responsible for negotiating maneuver agreements and short-term leases and, after the maneuver is completed, will be responsible for negotiating restoration settlements and/or releases, as appropriate. Real estate acquisition will be in the form of agreements with landowners, granting the right to conduct maneuvers at a given time, or periodically. Short-term leases for exclusive use may also be acquired for special areas (such as headquarters areas, radio relay sites, base camp sites, field hospital sites and supply dumps), and buildings needed for warehouses, ordnance shops and similar purposes directly related to the maneuver. Permits will be obtained to cover the use of lands under the jurisdiction of another Government department or agency.

(b) *Claims and restoration.* Notwithstanding the assignment of restoration responsibility, understanding may be reached with the maneuver director at field level whereby the command will assume responsibility for settlement of real estate damages using claim funds. However, in instances where the damage exceeds the monetary claims jurisdiction of the Army Commander pursuant to AR 27–20 and is cognizable as a contractual obligation under the maneuver permit, settlement will be accomplished by the Division or District Engineer either by supplement to the permit or by processing a claim under AR 405–15 (see § 552.16 of this chapter) since the Division or District Engineer can usually accomplish settlements more quickly for claims in excess of that amount. Therefore, it should be suggested to the maneuver director that all claims, cognizable as a contractual obligation, in excess of his monetary claims jurisdiction be handled by the Division or District Engineer. Funds appropriated for field exercises and maneuvers are allotted to Army Commanders and include administrative costs. The reporting requirements included in Figure 5–13 in ER 405–1–12 will be established by the Chief of Engineers upon receipt of a specific request from the using command to acquire maneuver rights.

§ 644.138 Family housing leasing program.

Section 515 of Pub. L. 84–161 (69 Stat. 324), as amended by Pub. L. 95–82, approved 1 Aug 1977, authorizes the expenditure of an average of $280 per month for each military department for housing facilities in the United States (other than Alaska and Hawaii) and in the Commonwealth of Puerto Rico, and an average of $350 per month for each military department for housing facilities in Alaska, Hawaii and Guam. In both cases the maximum rental rate per unit per month including utilities, operations and maintenance is $450. These rental figures are subject to change each year in the annual Military Construction Authorization Acts. Updated rental figures should be obtained from the current MCA Act. The Department of Defense allocates to each department of the military the number of units it can acquire pursuant to the authorization, and each year Division and District Engineers are informed of the unit allocations by the Chief of Engineers.

(a) *Leasing requests.* The Departments of the Army and Air Force direct their requests for the leasing of family housing units to the Division or District Engineer. Each military element involved has the responsibility of maintaining the national rental average. Each command prescribes the procedures to be followed in acquiring family housing units. Such procedures which include size of accommodations and maximum rental rate will be followed by the Division or District Engineer.

(b) *Use of available housing.* Priority shall be given to the leasing of adequate Federal Housing Administration (FHA) and Veterans Administration (VA) held units to the extent that such units may be available at locations which are granted lease allocations. FHA Form 2372A, as modified, will be used in leasing FHA housing for use as public quarters by military personnel. A similar form, modified as needed, will be used for VA held housing units.

(c) *Nondiscrimination provision.* All leases for family housing units which are executed on behalf of the United States shall contain the following nondiscrimination clause:

> It is understood and agreed that the Government will assign the demised premises to military personnel in accordance with Executive Order 11063, dated 20 November 1962, which provides that housing and related facilities shall be available without discrimination among tenants because of race, color, creed, sex or national origin.

(d) *Pest control.* In agreement with the lessor, whenever possible, the lessor will affirmatively assume responsibility for pest control in family housing units. The following clause will be included in family housing leases:

> It is understood and agreed that the lessor will be responsible to provide pest control measures and pesticides, which conform to local health department regulations, to keep the premises free from pests and in a tenantable condition.

It is intended that the occupant will maintain the leased premises in a clean and sanitary condition in conformance

with normal standards of good housekeeping, and that the lessor will furnish leased housing in pest-free condition and maintain the premises free of pest infestation.

(e) *Leasing actions.* (1) Division and District Engineers will proceed with acquiring the family housing units within the framework of the leasing requests. Care is to be taken to assure that there are no violations of the Economy Act, *i.e.*, the net rental will not exceed 15 percent of the estimated fee value of the space or building contemplated for leasing.

(2) At the discretion of the Division or District Engineer and the Chief of the Real Estate Division, Standard Form 2B may be used for family housing leases, regardless of the rental rate.

(3) Emergency repairs may be accomplished in accordance with § 644.135(f)(5).

(f) *Supplemental payments.* All leases for family housing units which are executed on behalf of the United States shall contain the following clause prohibiting supplemental payments: ''The Lessor hereby agrees that the rental consideration specified herein is the only consideration to be received for the demised premises and includes payment for all utilities, maintenance and services specified herein. No other remuneration will be paid by the Government's occupant, members of his family, or any other person on their behalf.''

§ 644.139 Leases for civil works purposes.

Division and District Engineers and the Chiefs of the Real Estate Division are authorized to execute leases, and renewals of leases, for river and harbor or flood control purposes, subject to necessary approvals and clearances. The provisions of 10 U.S.C. 2662, which require reporting of certain leases proposals to the Armed Services Committees of the Congress, do not apply to leases for civil works.

(a) *Approvals required.* The following lease actions for civil works projects will be referred to DAEN-REA-L for consideration:

(1) Where the annual rental is in excess of $50,000.

(2) Where the leasing involved is for space for both military and civil functions, and the rental for the portion used for military purposes is in excess of $50,000. The report required is covered in § 644.135(a).

(b) *Records.* The originals of leases for civil works purposes, together with supporting data, will be retained at the Division or District Engineer offices for site audit in accordance with Section 7530, ''General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.''

§ 644.140 Physical protection.

It is essential that the Division or District Engineer make provision for the physical protection for all facilities under Corps control. Coordination with state, county, and city law enforcement officials as well as the U.S. Attorney's Office is required. These officials should be alerted at the first indication of possible disturbances. The U.S. Attorney's Office should be provided with an up-to-date list of the locations of such facilities.

(a) *Self-protection plan.* Space or property controlled by GSA is the responsibility of GSA for physical protection. In accordance with 41 CFR 101–20.504, a Facility Self-Protection Plan is to be established by agencies in GSA-controlled space. This requirement should be coordinated with appropriate GSA Regional personnel. A similar plan should be made operational, where feasible, in other space over which the Corps has responsibility.

(b) *Funding.* Space under GSA control may require protection and the GSA Regional Offices may not have funds. In these situations, the facts will be made known to DAEN-REA-L, accompanied by a request for funds. Likewise, for Corps leases, funds for physical protection shall be requested from DAEN-REP if they are not already available to the Division or District Engineer.

§ 644.141 Alterations and construction on leased real property.

(a) *General.* Division and District Engineers will be available to the military elements for consultation and review of requirements involving construction on leased land or in leased

space. Detailed instructions are furnished in DOD Directives 4165.12, 4165.16, 4165.20, 4270.24, 5160.58, 7040.2; DOD Instruction 5305.5; Army Regulations 140–485, 405–10, 415–25, 415–35, 420–10. Section 644.135(b) covers the requirements of the Economy Act which are applicable to alterations and construction on leased real property. The work to be performed must be essential. Guidelines are furnished as follows:

(1) The proposed alterations and improvements must be advantageous to the Government in terms of economy, efficiency, and, where applicable, to national security.

(2) For office space, the cost should be less than the cost of other space that is available and which does not require alterations or improvements to any appreciable extent.

(3) Due regard is to be given to the convenience of the public that is served and the maintenance and improvement of safe and healthful working conditions of employees.

(4) Where the proposed temporary construction at a leased facility has an estimated cost equal to or in excess of the current market value of the property, the facts will be reported promptly to DAEN-REA-L.

(b) *Initial and subsequent alterations.* (1) Initial alterations to facilities leased by the Corps are the responsibility of the appropriate Division or District Engineer.

(2) Effort will be made to include all required alterations in the rental package with the lessor performing all of the work. Careful attention will be given to possible violations of the Economy Act. Payment for initial alterations may be in a lump sum or by the month with the rent, provided the provisions of the Economy Act are complied with and the alterations costs are stated separately in the file or in the voucher.

(3) Alterations or improvements of any nature in GSA furnished space are the responsibility of GSA. Under certain circumstances, GSA may require a Certificate of Necessity in order to perform the required construction.

(4) Although alterations and improvements subsequent to occupancy are not the responsibility of the Corps, the Division or District Engineer should always review subsequent alteration projects to determine whether or not the limitations of the Economy Act are applicable. See AR 415–34, AR 415–35, and AR 420–10 for procedures and instructions.

(c) *Army National Guard.* No initial alterations regardless of cost will be made to properties leased for the Army National Guard without prior approval of the Chief, National Guard Bureau. (Funds will be made available by the National Guard Bureau.)

(d) *Air Force.* All alterations to premises leased for the Department of the Air Force, including Air Force Reserve and Air National Guard Units, are the responsibility of that Department including the issuance of any Certificate of Necessity for Department of Air Force elements. The only exception is the leasing and modification of leased premises for recruiting facilities.

(e) *Recruiting facilities.* The Chief of Engineers, as the Department of Defense Executive Agent for recruiting facilities, is responsible for initial alterations for all recruiting facilities located on military reservations or leased by the Corps. This responsibility includes recruiting offices and recruiting main stations and detachments, whether single-service or collocated. However, as to recruiting facilities acquired by GSA, all alterations are the responsibility of GSA and processing is accomplished through the Division or District Engineer.

(f) *Permanent construction requirements.* If permanent construction is to be placed on land, the Government must have fee title or acquire title to the land or a permanent easement must be secured, with the following exceptions:

(1) Real property, including land or buildings, which the Government currently holds the right to reuse by exercise of the National Security Clause.

(2) Real property, including land or buildings, which the Government holds the right to reuse by exercise of a National Emergency Use Provision.

Since such rights apply only during the period or periods of national emergency and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering

such property under terms that would provide the Government the right of continuous possession for a minimum of 25 years.

(3) Real property required for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of $1.00 per term or per annum.

(4) Real property required for air bases, provided such property can be acquired by lease containing provisions for:

(i) Right of continuous use by the Government under firm term or right of renewal for a minimum of 50 years.

(ii) A rental consideration of $1.00 per term or per annum.

(iii) Reserving to the Government, title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for ''Government purposes'' rather than for a specific military purpose.

(5) Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in paragraph (f)(4) of this section. Whenever possible, the insertion in a lease of a provision restricting the use of land to a specific purpose will be avoided; use a term such as ''Government purposes''.

(6) Property required for air defense sites, provided such property can be acquired by lease containing provisions in paragraphs (f)(4)(ii), (iii), and (iv) of this section and the right of continuous use by the Government under a firm term or right of renewal for as long as required for defense purposes.

(7) Assistant Secretary of Defense (MRA&L) approval is required when leases for air bases, Reserve Components facilities, or air defense sites can be obtained containing some but not all of the above listed provisions. Such approval is also required for leases for all other types of installations upon which permanent construction is to be placed by the Government when leases can be obtained containing similar provisions. In all cases, it must be in the best interest of the Government to acquire a lesser interest than fee title.

(8) Construction projects estimated to cost less than $25,000 will not be considered a permanent construction for purposes of the above policy.

(g) *GSA reimbursement.* Reimbursement to GSA for Standard Level User Charges (SLUC) and other costs incident to leasing will be in accordance with the applicable provisions of the Federal Property Management Regulation.

(h) *Nominal rent leases.* (1) Where premises are occupied by the Government at a nominal rent or rent-free basis, any alterations, improvements, and repairs necessary for occupancy may be considered as a cost of occupancy, *i.e.*, in lieu of rent, for each year of the rental term. However, the total cost of such alterations, improvements, and repairs, plus the nominal rental, during any year of the rental term may not exceed 15 percent of the fair market value at the date of the lease, unless the total cost plus nominal rental does not exceed $2,000 per annum.

(2) When rental plus amounts to be spent by the Government for alterations, improvements, and repairs total more than $2,000 and more than 15 percent of the fair market value of the premises at the date of the lease, a Certificate of Necessity is required.

(3) A Certificate of Necessity is not required for the cost of installing equipment, apparatus, appliances, machinery, fixtures, movable partitions, etc., which are not intended to become an integral part of the building and which may be removed without injuring or defacing the item or the building. Such property is considered to be the property of the Government. The lease or a supplement thereto should provide for the installation and removal of such equipment, etc.

(4) Under the limitations in 40 U.S.C. 278a, not more than 25 percent of the net rental for the original lease period, if less than one year, may be expended before a lease is actually renewed. If the whole period, including renewals, is less than a year, not more than 25 percent of the rent for such whole period may be expended for alterations, repairs, and improvements (20 Comp.

Gen. 30; 29 Comp. Gen. 299). Where a lease, entered into by the Government for an original term of less than a year, is renewed for the following fiscal year, the net rental for the first year of the rental term, as distinguished from the original term, is for consideration in the computation of the amount that may be paid under the 25 percent limitation, after the lease is actually renewed.

(i) *Items not within the purview of the Economy Act.* (1) The limitations in 40 U.S.C. 278a are not applicable to leases of unimproved land (38 Comp. Gen. 143).

(2) Where fixtures, alterations, and improvements are of such characters to be of a temporary nature, and are not permanently attached to the realty so as to prevent removal thereof without destroying their usefulness or damaging them or the realty, they do not constitute alterations or improvements of the leased premises within the meaning of 40 U.S.C. 278a and therefore do not fall within the 25 percent limitation of that Act. Title to such temporary fixtures, alterations, and improvements remains in the Government (18 Comp. Gen. 144; 20 Comp. Gen. 105).

(3) Upon termination of leases, restoration of leased premises to the original condition is not considered an alteration within the purview of 40 U.S.C. 278a.

(4) When the Government is required by the terms of the lease to maintain the leased premises, such maintenance, together with the cost of such improvements and alterations as may be made by the Government, may not exceed the 25 percent restriction of the Act.

(5) Leaseholds acquired through condemnation proceedings are excluded from the purview of the Act of 30 June 1932, as amended (40 U.S.C. 278a).

(j) *Architectural Barriers Act.* The Architectural Barriers Act of 1968 (Pub. L. 90–480), 82 Stat. 718, 142 U.S.C. 4151, *et seq.*, as amended, requires that when Federal funding is used in the design, construction, or alteration of certain buildings or facilities, the buildings or facilities must be designed, constructed or altered to insure that physically handicapped persons will have ready access to, and use of, such buildings. In the Corps' leasing program, when Federal funds are used to make improvements to leased premises, it is necessary that the plans and specifications for the construction or alteration work be approved in accordance with guidelines published by the American National Standards Institute (ANSI), as implemented by DOD Construction Criteria Manual 4270.1–M, Section 5–1.6.

§ 644.142 Lease forms and instructions.

ENG Form 856 will be used for Corps of Engineers leases in the United States and possessions, and overseas, for the leasing of unimproved land. ENG Form 527 is recommended for leases of improved property in overseas areas. Standard Forms 2, 2A, or 2B (short form) will be used for all Corps of Engineers leases of improved property in the United States and possessions. Standard Form 2B is limited to rentals not exceeding $3,600 per annum. The General Provisions are on the reverse side of the short form lease.

(a) *Mandatory clauses.* The following clauses must be included in all Corps of Engineers leases:

(1) Officials Not to Benefit clause (para 15 of ENG Form 527) is required by 18 U.S.C. 431.

(2) Gratuities clause (para 16a of ENG Form 527) is required by 5 U.S.C. 174d.

(3) Covenant against Contingent Fees (para 14, ENG Form 527) is required by 10 U.S.C. 2306(b).

(4) An Examination of Records clause (para 17, ENG Form 527) is required by 10 U.S.C. 2313(b). Exceptions to the use of this clause in 10 U.S.C. 2313(c) are permitted when the contractor is a foreign Government or agency thereof, or when the laws of the country involved preclude it. Also, if the Head of the Agency determines, with the concurrence of the Comptroller General, that the use of the clause would not be in the public interest, it may be omitted in leases covering land in foreign countries.

(5) The Nondiscrimination clause (Executive Order 11063, dated 20 November 1962) is required in all leases in the United States. It is desirable, but is not considered mandatory in overseas leases.

(b) *Hold harmless clauses.* ''Hold harmless'' clause will not normally be added to the lease forms. Where lessors insist

upon such a clause, however, the following is suggested for use: ''The Lessors (licensors) shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Government's use of the premises under the terms of this agreement and are not due to the negligence of the Lessors.''

(c) *Escalator clauses.* In those cases where a lessor expresses an unwillingness to enter into a lease, extending for a number of years, with a rental consideration that includes a fixed amount for utilities, the following clause may be inserted in the standard lease:

After the first term of the lease, the Lessor or the Government may, by giving notice at lease 90 days prior to the anniversary date of the lease, request an adjustment in rental payments based on an increase or decrease in the cost of utilities. The request must be supported with full justification to include documentary evidence of actual utility costs incurred by the Lessor which are in excess of the amounts estimated at the beginning of the lease term. The requested adjustment in rent will be subject to negotiation, and if granted, will be provided by a Supplemental Agreement to this lease.

ACQUISITION OF RIGHTS-OF-ENTRY

SOURCE: Sections 644.155 through 644.157 appear at 44 FR 31125, May 30, 1979, unless otherwise noted.

§ 644.155 General.

Sections 644.155 through 644.157 describe the procedures of the Corps of Engineers relative to obtaining rights-of-entry on lands for both military and civil works projects and in the Corps' acquisition programs for other Federal Government agencies. These procedures are applicable to all Division and district Engineers having real estate responsibilities.

§ 644.156 Definition.

A right-of-entry is a bare authority to do a specified act or series of acts upon non-Government-owned property or non-Government-controlled property without acquiring any estate or interest therein. The principal effect of a right-of-entry is to authorize an act which, in the absence of the right-of-entry, would constitute a trespass. The written instrument furnishes evidence of the permission granted to the government and the obligations, responsibilities, and liabilities assumed by the Government. It does not authorize any uses of the property by the Government other than those specified in the instrument.

§ 644.157 Procedures.

(a) ENG Form 1258, Right-of-Entry for Survey and Exploration, will be used to obtain authority from the owner of lands to be used for the purpose of making surveys, test borings, and other exploratory work as may be necessary to complete the particular investigation.

(b) ENG Form 2803, Right-of-Entry for Construction, will be used to obtain authority from the owner of lands to be used for construction purposes when all of the following conditions apply:

(1) A Real Estate Directive has been issued on an Army (military) or Air Force project, or the Chief of Engineers has approved acquisition in connection with a civil works project or for another Government agency.

(2) The construction schedule does not allow sufficient time to secure the right of possession by normal acquisition procedures.

(c) Upon execution of an ENG Form 2803, a copy thereof shall be forwarded to HQDA (DAEN-REA-L) WASH DC 20314 on Army Military and Air Force acquisitions, and in all other cases to HQDA (DAEN-REA-P) WASH DC 20314, together with a proposed schedule of final acquisition of the necessary interests in real estate. If final acquisition is not contemplated within six months from the date of the right-of-entry, an explanation should also be furnished as to the reason for the delay.

(d) Division and District Engineers may modify ENG Forms 1258 and 2803, where necessary, to meet requirements of landowners, provided such modifications do not increase the scope of the liability or responsibility of the Government over that contained in the standard forms.

(e) It is necessary to recognize not only the effects of entry upon a particular parcel of land, but also the effects of the passage of any vehicle