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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

(land, air, or water) on the area traversed. All possibilities of disturbing effects on the countryside shall be considered and routes selected to eliminate or minimize such disturbances.

(f) Any cash settlements in lieu of restoration for damages, incurred under ENG Forms 1258 and 2803, will be consummated by supplemental agreement in accordance with subpart I.

PROCUREMENT OF OPTIONS PRIOR TO REAL ESTATE DIRECTIVES (MILITARY)

SOURCE: Sections 644.165 through 644.168 appear at 44 FR 31125, May 30, 1979, unless otherwise noted.

§ 644.165 Purpose and scope.

Sections 644.165 through 644.168 describe the procedures relating to the procurement of options to purchase real estate interests for Army or Air Force military requirements prior to the issuance of a real estate directive. These procedures are applicable to all Division and District Engineers having military real estate responsibility.

§ 644.166 Authority and applicability.

(a) *Authority.* Subsections (a) and (b) of section 2677 of title 10, United States Code, as amended by section 707 of the Act of Congress approved October 27, 1971 (85 Stat. 412), provide that:

(1) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(2) As consideration for an option so acquired, the Secretary may pay from funds available to his department for real property activities, an amount that is not more than five percent of the appraised fair market value of the property.

(3) For each six-month period ending on June 30 or December 31, during which he acquires options under paragraph (a) of this section, the Secretary of each military department shall report those options to the Committees on Armed Services of the Senate and House of Representatives.

(b) *Applicability.* (1) Where land is needed for proposed construction and the siting of said construction is firm.

(2) When there is a definite indication of material enhancement in value due to change, or proposed change, in use by the land owner, price increase due to publicity given to contemplated Government acquisition, or abnormal increases in market value.

(3) Where there is a definite possibility of private construction which would constitute obstructions in existing or proposed glide angle planes and transitional planes at air bases.

§ 644.167 Implementation.

When a District or Division Engineer determines that any of the conditions described in § 644.166(b) exist in connection with any proposed land acquisition project for military purposes not yet authorized by law, or if authorized, not yet covered by a real estate directive, he will initiate the following actions:

(a) *Planning report.* A planning report will be developed and submitted in accordance with subpart A. The report will include the purpose for which the property is ''likely to be needed''; the estimated probable increase in value, if applicable; and the justification for negotiating for options under the authority cited in § 644.166. The report will identify any real estate planning reports previously prepared which included the land in question. Any future planning reports relating to the same land will contain appropriate references to this report.

(b) *Property identification.* Upon receipt of authority to acquire options and determination that funds are available, the District or Division Engineer will obtain and verify ownership data. If it is deemed necessary, title evidence may be obtained in accordance with §§ 644.61 through 644.72.

(c) *Appraisal.* Detailed tract appraisals will be prepared in accordance with subpart B.

(d) *Procurement of options.* (1) Negotiations for the option will be in accordance with procedures outlined in §§ 644.83 through 644.85, except that ENG Form 2926, Option to Purchase