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(DAEN-REM) advice when the final report is made to GSA. Where the report is finalized by statement confirming a preliminary report as final, copies of the preliminary report and confirming statement should be distributed in accordance with §§ 644.348 through 644.367. Distribution of preliminary Reports of Excess, except to GSA, will not be made in other cases.

§ 644.394 Protection of disposal information.

To prevent premature disclosure to the public, information on and plans for disposal of all or a portion of an installation should be protected (AR 340–16), until such time as the property is determined excess to Army or Air Force requirements. (The Air Force preliminary real estate disposal directive is not issued until a determination has been made that the property is excess to Air Force requirements.) After determinations of excess are made, it is desirable that information on the availability of the property for disposal be widely disseminated. ''FOR OFFICIAL USE ONLY'' marking on plans and correspondence pertaining to the excess action may be cancelled by any recipient or holder. Where the classification ''CONFIDENTIAL'' or higher has been used, documents must be declassified in accordance with AR 380–5.

§ 644.395 Coordination on disposal problems.

If any major change or problem requires a significant revision in the time schedule for disposal, prompt action will be taken to advise offices concerned. HQDA (DAEN-REM) should be promptly informed of any problem adversely affecting a specific disposal project or the overall program for disposal or property.

§ 644.396 Assignment of personnel to administer.

To extent appropriate according to the circumstances and nature of the property, the DE will assign a responsible representative to each installation, or group of installations, to act under his staff supervision in performance of the following functions:

(a) Monitoring and expediting the actions described in §§ 644.385 through 644.399 and maintaining close liaison with GSA on disposal problems and actions.

(b) Monitoring and expediting performance of such demolition, dismantling or other construction work as may be authorized.

(c) Administration, operation and maintenance of the excess installation until final disposal, making every effort by consolidation of activities and otherwise to reduce the costs consistent with economic management of the facilities.

(d) Coordination of ultimate transfer of assumed custodial responsibility to other agencies or persons as directed.

§§ 644.397–644.399 [Reserved]

Disposal of Fee-Owned Real Property and Easement Interests

§ 644.400 Authorities—general.

(a) *Statutory authorities.* Power to dispose of real estate belonging to the United States is vested in Congress (paragraph 2, Section 3, Article IV, Constitution of the United States), and no real estate of the Department will be sold or otherwise disposed of without authority of Congress. By the Federal Property and Administrative Services Act of 1949 (Federal Property Act), (Pub. L. 152, 81st Congress; 63 Stat. 377) as amended, (40 U.S.C. 471 *et seq.*), Congress provided authority for utilization of excess property and the disposal of surplus Federal property, and established the General Services Administration (GSA) to administer the provisions of that Act. All excess and surplus Federal real estate and real property components will be disposed of under authority of the Federal Property Act, as amended, unless other statutory authority for such disposal is specifically withheld under the provisions of the Act or enacted subsequent thereto. In connection with disposals made under statutory authority other than the Federal Property Act, attention should be given to the purposes of the legislation and insofar as practicable, disposal of property should be in accordance with the provisions of the Act and the regulations issued thereunder, in order that the greatest overall efficiency and economy be effected.

(b) *Rules and regulations*—(1) *Issued by the GSA.* Rules and regulations issued by the GSA to effectuate its authority in respect to disposal of real estate and real property components are contained in FPMR, Section 101–47, as amended, including disposition of timber, embedded sand, gravel and stone, buildings and other structures, and leaseholds and other rights to use or occupy real estate. The DE will be governed by these rules and regulations. GSA also issues, from time to time, special delegations of authority to the Department of Defense with power of redelegation.

(2) *Issued by the Departments.* Policies and procedures of the departments with respect to the control, management, maintenance, and disposition of real estate and real property components located within the continental United States and its territories and possessions, placed in excess status or to be placed in excess status are contained in AR 405–90, AFR 87–4, and AR 405–5/AFR 87–15, except Army civil works property which is governed by ER 405–1–12.

(c) *Authorities delegated to the Department of Defense.* Under the publications and special delegations issued by GSA, the Department of Defense has been designated disposal agency categories enumerated in § 644.314.

(d) *Authorities delegated to the Army and Air Force.* Department of Defense Directive 4165.6, among other things, redelegates to the Secretaries of the Army, Navy and Air Force, and to such individuals as they may designate for the purpose of administering real estate actions within their respective departments, the authorities which were then, or may hereafter be, assigned and delegated to, or vested in the Secretary of Defense by:

(1) Sections 401 and 402 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 511 and 512) and regulations of the GSA promulgated thereunder.

(2) The Administrator of General Services, pursuant to Section 203 (a), (b) and (c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484).

(3) Other specific delegations from the Administrator of General Services.

(e) *Authorities (Special).* In addition to the general authority cited in paragraph (d)(2) of this section, the Department derives authority from a number of special purpose statutes to transfer real property to other Federal agencies and to dispose of real property for special purposes, or to special classes or in a specific manner to achieve a specific objective. Some of these acts are utilized in conjunction with regulations of GSA and some are exercised independently thereof according to the nature of the particular law. These laws are described in subsequent sections of ER 405–1–12.

§ 644.401 Transfers—general.

Résumés of the principal legislative acts authorizing transfer of Army and Air Force real property to other Federal departments are contained in §§ 644.402 through 644.408. The authorities in these acts are exercised independently of GSA regulations. Transfers under these authorities are made without reimbursement. Real property can also be transferred under the Federal Property Act within the scope of disposal authority delegated by GSA. Transfers under the Federal Property Act are subject to reimbursement as prescribed by FPMR, section 101–47.203–7. Property reported to GSA for disposal will be transferred only at the direction of GSA. Excess property excepted from reporting may be transferred by the DE under GSA regulations. Transfers to the Department of the Interior of surplus lands chiefly valuable for migratory bird management are subject to GSA regulations but are made without reimbursement (§ 644.429).

§ 644.402 Transfers among the armed services.

10 U.S.C. 2571(a) authorizes the interchange without reimbursement of military stores, supplies, and equipment of every character, including real estate owned by the Government, between the Army, Navy, Air Force and Coast Guard upon request by the head of one service and with the approval of the head of the other service.

§ 644.403 Transfers to Tennessee Valley Authority.

10 U.S.C. 831f(b) authorizes the President of the United States to provide for the transfer to the Tennessee Valley Authority of the use, possession and control of such real or personal property of the United States as he may from time to time deem necessary and proper for its purposes. This authority is applicable to property under the jurisdiction or control of the Secretaries of the Army and the Air Force. The authority vested in the President by this law has been delegated to the Office of Management and Budget by Executive Order No. 10530 dated 11 May 1954, as amended (see footnote to 3 U.S.C. 301).

§ 644.404 Transfers to Federal Prison Industries, Inc.

18 U.S.C. 4122 authorizes any department or agency of the Department of Defense to transfer without exchange of funds, to Federal Prison Industries, Inc., any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under subsection (d) of this Act. The provisions include the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any DOD agency or department.

§ 644.405 Transfers to Veterans Administration.

38 U.S.C. 5003 authorizes the Secretaries of the military departments to transfer, without reimbursement, to the Veterans Administration, facilities, supplies, equipment, or material necessary and proper for the authorized care of veterans. The word ''facilities,'' as used in this Act, has been construed to include buildings and grounds.

§ 644.406 Transfers to Secretary of Transportation and the National Weather Service.

49 U.S.C. 1157 authorizes the Department of Defense to transfer, without charge, to the Secretary of Transportation, airport property and airway property, exclusive of meteorological facilities in territory outside the continental limits of the United States (including Alaska). Section (b) of this Act similarly authorizes transfer of meteorological facilities, without charge, to the National Weather Service.

§ 644.407 Transfers to District of Columbia.

40 U.S.C. 122 authorizes Federal and District authorities administering properties within the District of Columbia, owned by the United States or by the District, to transfer jurisdiction over parts or all of such property among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon, provided that, prior to the consummation of any such transfer, the proposed transfer shall be recommended by the National Capital Planning Commission. All such transfers and agreements shall be reported to Congress by the District authorities concerned.

§ 644.408 Interchange of national forest and military and civil works lands.

16 U.S.C. 505a, 505b authorizes the Secretary of Agriculture, with respect to national forest lands, and the Secretary of a military department, with respect to lands under the control of the military department which lie within or adjacent to the exterior boundaries of a national forest, to interchange such lands, or parts thereof, without reimbursement or transfer of funds whenever they shall determine that such interchange will facilitate land management and provide maximum use thereof, for authorized purposes. This law further provides that no transfer thereunder shall become effective until 45 days after the submission to the Congress by the respective Secretaries of notice of intention to make the interchange. The law also provides, in effect, that lands so transferred shall thereafter be subject only to the laws applicable to the lands of which the transferred lands become a part. Lands under the administrative control of the Congress, both military and civil, and that of the Air Force are within the scope of this law.

§ 644.409 Procedures for Interchange of National Forest Lands.

(a) *General.* The interchange of national forest lands is accomplished in three steps: first, agreement must be reached between the two departments involved as to which lands will be interchanged; second, the two departments will jointly notify the Speaker of the House of Representatives and the President of the Senate, by letter, of the intention of the two departments to make the interchange agreed upon; third, upon the expiration of 45 days from the date of submission of the notice of intention (counting only days occurring during any regular or special session of the Congress) the two secretaries will execute jointly and cause to be published in the FEDERAL REGISTER an order transferring the respective lands of each department to the other.

(b) *Initiation of requests for interchange.* Requests for interchange of lands may be originated by either the military department involved or the Department of Agriculture. Those originated by the Department of the Army may result from land requirements generated by newly authorized civil works or military construction projects or from authorized expansion of existing projects or as a result of property utilization surveys. Department of the Air Force requirements may develop similarly. When a request originates with the Department of the Air Force requirements may develop similarly. When a request originates with the Department of Agriculture pertaining to a civil works project or a military installation, it will be analyzed and coordinated by the DE with local representatives of the Department of Agriculture and the using service, as appropriate, to determine the feasibility of and need for the acquisition of any forest land to improve administration of the Army project or installation and the availability of Army lands for transfer to the Department of Agriculture. When coordinated analysis indicates the propriety of an interchange, an interchange planning report will be developed by the DE, in coordination with interested local elements of the two departments and submitted to HQDA (DAEN-REM) WASH DC 20314, with appropriate recommendations.

(c) *Contents of interchange planning report.* The planning report should include the following information:

(1) Location of the areas proposed for interchange, including the county or municipality, names of the forest, project or installation, and number of acres to be interchanged by each department.

(2) If the areas involved include public domain lands, the number and date of the Executive Order or Public Land Order by which withdrawn or established.

(3) If the areas include acquired lands:

(i) Approximate dates, methods and cost of acquisition of Department of the Army lands proposed for interchange.

(ii) Interest, restrictions and reservations currently outstanding, to which the lands were subject when acquired, together with such rights subsequently granted by the Government and presently in force.

(4) Any additional reservations, conditions or restrictions under which the interchange is to be made.

(5) A map, in triplicate, indicating by appropriate color scheme the lands of each department which are to be interchanged. The map should show the jurisdictional boundary, and, where appropriate, the contour elevations used as a basis for determining the extent of the interchange.

(6) An informal estimate of the current values of the areas to be interchanged.

(7) Information upon which to base a determination by the two Secretaries that the interchange will facilitate land management and provide maximum use thereof for authorized purposes.

(8) Any other information or data that might be helpful to representatives of the Department of the Army in answering pertinent questions that may be raised by the committees of Congress.

(9) A draft of order of interchange prepared, in sextuplicate, in coordination with representatives of the Forest Service for execution jointly by the two Secretaries.

(10) Recommendations of the District and Division Engineers.

(d) *Relinquishment and assumption of possession*. Upon notification by the Chief of Engineers that an order of interchange has been published, the DE will coordinate with local representatives of the Forest Service, and the using service if appropriate, the exchange of custody and accountability of the respective areas.

§ 644.410 Procedure for other transfers.

(a) *Applicability—Exceptions*. Sections 644.410 through 644.412 are applicable to all transfers of real and related personal property to other Federal agencies by the Army and Air Force except as provided above.

(b) *Authority to execute*—(1) *Secretaries of the Army and Air Force*. Instruments effecting the transfer of fee-owned land (except fee-owned land that has been reported to GSA and is transferred at the direction of GSA) will be executed at Secretarial level. The Secretary of the Army, or his designee, will execute instruments transferring Air Force land to other Federal agencies.

(2) *Division and District Engineers* will execute instruments transferring real property and related personal property to other Federal agencies: (i) Which has been reported to GSA and which is transferred at the direction of GSA; (ii) leaseholds, easements, and other lesser interests in lands; and (iii) buildings, fixtures, and other improvements.

§ 644.411 Form of inter-agency transfer instrument.

(a) Inter-agency transfer instruments will be prepared by the Chief of Engineers in either memorandum or letter form. The instruments will be prepared for signature of the Secretary of the transferring department and will be addressed to the Secretary of head of the receiving department or agency. The instrument will provide, as a minimum, the following: citation of statutory authority for the transfer; statement as to whether the transfer is made with or without reimbursement; statement of the reimbursement amount, if applicable; statement as to whether the requirements of 10 U.S.C. 2662 have been met or that the transfer is not subject thereto; statement as to the acreage of land involved; and, by means of an inclosure, a description of the property being transferred. Based on the circumstances and nature of the property, other appropriate data outlined below will be included in the instrument.

(1) Effective date of transfer (where right-of-entry has been granted or custody transferred, this date will be used.)

(2) Restrictions, conditions, reservations and exceptions, as necessary.

(3) When, where, how and by whom transfer of physical possession and accountability for the property will be accomplished.

(4) Location and proposed disposition of title papers pertaining to the property.

(5) Description of the land and copy of map depicting the property and reflecting its relation to retained property, if any, and to encumbrances such as rights-of-way, easements, and leaseholds.

(6) Instructions concerning payment of rent where a lease is involved. The transfer will be conditioned upon assumption of all obligations incurred in connection with the leasehold, including obligations to restore the premises.

(7) Instructions concerning removal and site restoration where buildings or timber, or sand and gravel, or other separable property is involved.

(8) Statement of source of title and cost of acquisition where land is involved. Reservations and exceptions in and to the Government's title and easements and other rights in the property granted by the Government will be stated with particularity.

(9) List and description of buildings and improvements and cost of buildings and improvements not acquired with the land.

(10) A reference to excess or other directive making the property available for transfer when instrument is executed by District Engineer.

(11) Statement of responsibility and reimbursement for utility services.

(12) Reference to Report of Excess, Standard Form 118, where property has been reported to GSA.

(13) Other appropriate information.

(b) The DE will provide the data outlined in paragraph (a) of this section to HQDA (DAEN-REM) WASH DC 20314 for

use in preparing transfers to be executed at the Secretariat level. The forwarding correspondence will contain sufficient information for a full and complete understanding of the proposed transfer action, including an appraisal when reimbursement is required, together with other appropriate comments and recommendations.

§ 644.412 Transfer of custody and accountability.

The DE will transfer custody and accountability or will coordinate the transfer, as appropriate. The DE will collect any reimbursement and obtain any releases required. Where a leasehold is involved, the DE will furnish the transferee a copy of the lease and advice of the last rental paid and when the next rent is due. Upon completion of the transfer, proper notice will be given to the General Accounting Office, the lessor, and the Finance Officer as to the responsibility of the transferee for future rental payments. This action will be initiated or completed promptly upon receipt of a copy of the executed instrument, and a conformed copy thereof will be furnished to HQDA (DAEN-REP) WASH DC 20314.

§ 644.413 Exchanges of fee-owned land and easement interests.

The statutes identified in §§ 644.414 through 644.417 authorize the exchange of Government-owned lands and interests therein for private lands and lands owned by States, other non-Federal agencies, and their instrumentalities. As a general rule, any exchange of lands should be restricted to lands of approximately equal value. Where the Government property proposed for exchange has a value substantially in excess of the private land to be acquired, the question of whether the transaction is truly an exchange arises. In drafting relocation contracts, care must be exercised to insure that there is legal authority for execution of the conveyance or easement proposed.

§ 644.414 MCA acts.

The annual military construction authorization acts usually contain general authority for the acquisition, ''by donation, purchase, exchange of Government-owned lands, or otherwise,'' of lands and interests therein at specified installations or for specified military purposes. The annual acts must be examined to determine that specific authority exists to acquire land by exchange, unless a contemplated exchange falls within the scope of one of the special laws mentioned in §§ 644.415 through 644.419.

§ 644.415 Army military and Air Force lands—$50,000 limitation.

(a) 10 U.S.C. 2672 authorizes the Secretary of a military department to acquire land and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise, that:

(1) The Secretary or his designee determines is needed in the interest of national defense, and

(2) Does not cost more than $50,000.

(b) 10 U.S.C. 2672a authorizes the Secretary of a military department to acquire any interest in land, including by exchange of Government-owned land, that:

(1) The Secretary or his designee determines is needed in the interest of national defense;

(2) Is required to maintain the operations integrity of a military installation; and

(3) Considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

§ 644.416 Army civil works lands.

The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately-owned lands required for such purposes (33 U.S.C. 558b and 558b–1).

§ 644.417 For MCA family housing.

The Act of 1 September 1954, Pub. L. 765, 83rd Congress (68 Stat. 1119), as amended by section 415 of Pub. L. 968, 84th Congress, Act of 3 August 1956 (70 Stat. 1018) authorizes the acquisition of real estate by donation, purchase, exchange of Government-owned lands, or otherwise, for ''Military Construction-Army Family Housing at Military Installations and Facilities.''

§ 644.418 Procedure for exchange.

(a) Each agreement for the exchange of real property should be formalized by written contract specifying the terms and conditions of the exchange, including, by reference to exhibits incorporated therein or otherwise, the form and terms of the conveyance of the title to the property to and from the Government. The agreement, in the case of relocation contracts, will be developed in accordance with ER 1180–1–1. Where an exchange of land or interests therein is considered desirable in the course of a condemnation proceeding, the agreement can be incorporated in a stipulation therein (§§ 644.111 through 644.121)

(b) Submission to the Chief of Engineers of draft of conveyance.

(1) Conveyance will usually be executed by the Secretary or head of the agency involved § 644.441. To avoid impinging on his discretionary powers, the execution of any contract or agreement involving an exchange of real property interests must be approved in advance, be deferred pending execution of the conveyance, or provide that the terms and conditions of any grant to be made pursuant to the contract will be subject to approval by the Secretary or agency head. It is considered preferable that the contract contain a draft of conveyance as an exhibit thereto and, where time will permit, be submitted to DAEN-REM for review prior to final execution of the contract in order to avoid possible difficulties arising from subsequent disagreement over terms acceptable to the signatory of the Government's conveyance.

(2) In submitting for final approval and execution the conveyance of the Government's interest in land pursuant to a contract for exchange, the following data should included to support the proposed action:

(i) Description and map of the property to be conveyed.

(ii) Statements as to how and when the Government acquired title to the property, the nature and extent of its interest therein, and a statement of any encumbrance to which the property is subject and the nature thereof, such as easements for road rights-of-way, utility lines, etc.

(iii) A sufficient number of drafts or the conveyance to permit distribution thereof to interested agencies and the grantee.

(iv) Two copies of the contract, option, stipulation in condemnation or other agreement which provides for the proposed conveyance, or, in lieu thereof, pertinent excerpts therefrom sufficient to clearly show the nature and extent of the Government's obligation to execute the conveyance.

(v) A citation of the statutory authority on which the execution of the conveyance is to be predicated.

(vi) Any additional information necessary to a proper understanding of the proposed transaction.

(vii) When the exchange agreement is other than a relocation contract, an appraisal report showing the relative fair values of the properties to be exchanged.

(viii) A copy of the conveyance to be made to the United States, or a statement by the Attorney General that an acceptable conveyance has been executed and delivered to the United States, and that an opinion of good title has been made or is not required by regulation to be made.

(ix) Recommendations of the Division and District Engineers.

§ 644.419 Public Law 87–852 easements.

Public Law 87–852, approved 23 October 1962 (76 Stat. 1129), authorizes executive agencies to grant easements on real property of the United States for rights-of-way or other purposes on terms and considerations deemed necessary to protect the interest of the United States, with or without monetary consideration, or other consideration, including any interest in real property. The Act also authorizes the relinquishment of legislative jurisdiction to the State.

§ 644.420 Disposal of property in which the military departments have a continuing interest under special acts of Congress.

General. Because of the continuing interest of the departments in the following properties and in view of the determinations under the Acts on which the disposals are premised, properties

that can be conveyed under authorities discussed in §§ 644.421 through 644.424 are not considered surplus or excess within the meaning of these terms as defined in the Federal Property Act.

§ 644.421 Highway purposes.

Title 23 U.S.C. 317 provides that upon application of the Secretary of Transportation, land or materials may be transferred to a state for the construction or maintenance of a right-of-way for any highway adjacent to a Government installation. If, within a period of four months after such application by the Secretary of Transportation, the Secretary of the Department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purpose for which such land or materials have been reserved, they may be appropriated and transferred to the state for such purposes. When the need for such land or material ceases to exist, they shall revert to the control of the department. This section applies only to projects constructed on a Federal-aid system, or under the provisions of chapter 2 of title 23 U.S.C. Usually applications for highway rights-of-way or the use of borrow material made under this Act by the Federal Highway Administration, Department of Transportation, on behalf of a particular state can be and are more simply satisfied by the issuance of a road easement or a license to take borrow material. This latter procedure is also desirable in that controls necessary to satisfy military requirements may be retained. Title 23 U.S.C. 107(d) directs Federal agencies to cooperate with the Secretary of Transportation in providing rights-of-way, including control of access, for the interstate highway system over lands and interests in lands owned by the United States.

§ 644.422 Authorized widening of a public highway, street, or alley.

40 U.S.C. 345c authorizes the conveyance, upon application, of such interest in real property as is determined will not be adverse to the interests of the United States, to the states or political subdivisions for authorized widening of a public highway, street, or alley. The conveyance may be made with or without consideration, and subject to terms and conditions deemed necessary to protect the interests of the United States. Excepted from this authority is the conveyance of any interest in real property that can be transferred under title 23 of the United States Code (see § 644.421), and to public lands in the National Forest System.

§ 644.423 Airport development.

(a) *Authority.* 49 U.S.C. 1723 provides that

(a) . . . whenever the Secretary of Transportation determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace. (b) Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department, or agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall

at the option of the Secretary, revert to the United States.

(b) *Approval.* The requirement for approval by the President was waived by Executive Order 12079 dated 18 September 1978. The Attorney General delegated his authority to approve to the Assistant Attorney General, Land and Natural Resources Division, by § 0.67 of title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 22, 1971: 36 FR 20428). The instrument of conveyance must cite authority for the waiver and the delegation as shown in the suggested format of deed in ER 405–1–12.

(c) *Requirements for conveyance instrument.* Under authority delegated by the Secretary of Transportation to the Federal Aviation Administration (FAA), when the Administrator of the FAA requests a conveyance from a military department, the instrument of conveyance requires the following provisions as covenants running with the land, binding the grantee, its successors and assigns.

(1) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with the National Airport System Plan the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(2) That the airport, and its appurtenant areas and its buildings and facilities, whether or not the land is conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, religion, age, sex, handicap or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

(3) That the grantee will not grant or permit any exclusive right forbidden by section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

(4) That the grantee agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, religion, age, sex, handicap or national origin.

(5) That the grantee agrees to comply with all requirements imposed by or pursuant to part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR part 21)—nondiscrimination in federally assisted programs of the Department of Transportation—effectuation of title IV of the Civil Rights Act of 1964.

(6) That in furtherance of the policy of the FAA under this covenant, the grantee:

(i) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(ii) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before 17 July 1962 at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(iii) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(7) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

(8) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

(9) That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph (c)(7) of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

(10) That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

(d) *Procedure for conveyance.* Upon receipt of a deed from the District Engineer, DAEN-REM will submit the deed to the appropriate Secretary for execution, and to the Assistant Attorney General, Land and Natural Resources Division, for approval, before returning it to the District Engineer for delivery to the grantee.

(1) The deed assembly submitted will contain, in triplicate:

(i) The request from the Administrator of FAA to the Secretary of the military department concerned;

(ii) The reply from the Secretary involved to the Administrator, making the property available;

(iii) The resolution by the appropriate governing body of the public agency sponsoring the project in question indicating authorization for acquisition by such agency and its concurrence with the terms and conditions of the conveyance.

(2) Transmittal correspondence shall also set forth:

(i) The type and condition of the property, including improvements acquired therewith or constructed since acquisition;

(ii) Whether there has been any change in the nature, quantity, etc., of the property requested by the agency from the date of its original request to the present. If so, details should be furnished together with an appropriate amendatory resolution (in triplicate) by the governing body of the sponsoring agency;

(iii) Expenses of transfer. In view of the provision in the Act that the conveyance will be made without any expense to the United States, if land surveys are required the transferee agency will be required to pay cost of making such surveys.

§ 644.424 Development of public port or industrial facilities.

(a) *Authority.* Section 108 of Pub. L. 86–645 approved 14 July 1960 (33 U.S.C. 578) authorizes the Secretary of the Army, after certain determinations are made, to convey land which is a part of a water resource development project to a state, political subdivision thereof, port district, port authority, or other body created by the State or through a compact between two or more States for the purpose of developing or encouraging the development of public port or industrial facilities.

(b) *Limitation.* Only lands within a navigation project will be made available for conveyance for these purposes.

(c) *Delegations, rules, and regulations.* Pursuant to rules and regulations published in the FEDERAL REGISTER 11 March 1961 (26 FR 2117–2118; 33 CFR 211.141 through 211.147),

(1) The Chief of Engineers or the Director of Civil Works has been delegated authority to determine:

(i) That the development of public port or industrial facilities on land within a project will be in the public interest;

(ii) That such development will not interfere with the operation and maintenance of the project;

(iii) That the disposition of the land for these purposes under this Act will serve the objectives of the project;

(iv) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purpose for which the project was authorized; and

(v) The conditions, reservations and restrictions to be included in a conveyance under the Act.

(2) The District Engineer has been delegated authority to:

(i) Give notice of any proposed conveyance under the Act and afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase; and

(ii) Determine the period of time in which applications for conveyances may be filed.

(3) *Notice.* The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (i) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within the state in which the available land is located and, if any agency of an adjoining state or states may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within such state or states, and (ii) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

(4) *Filing of application.* Any agency interested in the development of public ports or industrial facilities upon the available land shall file a written application with the District Engineer within the time designated in the public notice. The application shall state fully the purposes for which the land is desired and the scope of proposed development.

(5) *Price.* No conveyance shall be made for a price less than the fair market value of the land.

(6) *Conveyance.* Any conveyance of land under this Act for public port or industrial facilities will be by quitclaim deed in the form of Figure 11–5 in ER 405–1–12 executed by the Secretary of the Army.

(d) *Procedure.* (1) Proposals to convey land included in navigation projects for development of public port or industrial facilities will be forwarded by the District Engineer, through the Division Engineer, to HQDA (DAEN-REM), with recommendations, and with the information required by § 644.329, and such additional information as will enable the Chief of Engineers to make the determinations required under paragraph (c)(1) of this section.

(2) Upon receipt of notification from the Chief of Engineers that the property is available for sale for development of public port or industrial facilities, the District Engineer shall give notice of such availability in accordance with paragraph (c)(3) of this section. The public notice will follow substantially the guide format in Figure 11–4 of ER 405–1–12.

(3) If two or more applications are received from eligible agencies, all applications, with recommendations, will be forwarded, through the Division Engineer, to DAEN-REM for the determination referred to in paragraph (c)(1)(iv) of this section.

(4) Upon determination of the actual property to be included in a conveyance, the fair market value thereof will be established by an appraisal.

(5) Upon the acceptance of an application, negotiations will be conducted at the price established by the appraisal. However, the applicant will be advised that the price is subject to approval by the Secretary of the Army. This is necessary since the Secretary of the Army has not delegated his authority to determine the fair market value for conveyances under this Act. If public port facilities that can be used in connection with proposed industrial facilities have not been constructed in

the vicinity, no disposal under this authority will be authorized which does not provide for construction of public port facilities.

(6) Upon completion of negotiations a quitclaim deed following the sample format in Figure 11–5 of ER 405–1–12 will be prepared and forwarded, through the Division Engineer, to HQDA (DAEN-REM) for execution by the Secretary of the Army, in accordance with the general procedure for submission of deeds for execution as outlined in § 644.441.

§ 644.425 Authority and procedure for disposal of surplus property by DA to eligible public agencies.

FPMR 101–47.303–2 provides that the disposal agency shall allow a reasonable period of time for states, municipalities, and their instrumentalities, to perfect a comprehensive and coordinated plan of use and procurement of surplus property in which they may be interested. This provision applies to surplus property that can be disposed of by negotiated sale under the special acts listed in §§ 644.428 through 644.432 for public highways, streets, and alleys under the Act listed in §§ 644.421 and 644.422, by transfer to the District of Columbia under § 644.407, and under the individual agency negotiating authority of the Federal Property Act, (40 U.S.C. 484(e)(3). A listing of the special acts, with the eligible public agencies, and some guides for classification of property for disposal are contained in FPMR, 101–47.4905.

§ 644.426 Classification.

Pursuant to FPMR, 101–47.303–1, any item of surplus land not reported to GSA for disposal in accordance with §§ 644.348 through 644.367 will be classified according to its highest and best use, e.g., industrial, commercial, agricultural, or for disposal under the special acts referred to above. Where required by the special acts, classification will be coordinated with the interested Federal agency. The classification will be recorded on ENG Form 1825 (Real Property Classification), with sufficient information to justify the classification. Surplus property may be reclassified from time to time whenever such action is deemed appropriate. Based on its classification, notice of the availability of surplus land for disposal will be given to public agencies eligible to procure such property as provided in § 644.427.

§ 644.427 Notice to eligible public agencies.

FPMR, 101–47.303–2 and 101–47.308–1, *et seq.*, provide a procedure of formal notice to eligible public agencies of the availability of surplus land for disposal. Notices are not required for property having an estimated fair market value of less than $1,000, except where the disposal agency has reason to believe that an eligible public agency may be interested in the property. Notices as provided in this section will be given for all surplus airport property and surplus fee-owned land for which the Army is the disposal agency, that is classified for disposal under a special act, or if there is reason to believe that a public agency may be interested in acquiring the land by negotiation at its appraised fair market value under the Federal Property Act (40 U.S.C. 484(e)(3)(H).

§ 644.428 Airport property.

(a) *Eligible transferees.* The right to acquire surplus property without monetary consideration for airport purposes, under 50 U.S.C. 1622(g), with the approval of the Administrator of GSA, is limited to states, political subdivisions, municipalities and tax-supported institutions. This is the proper statutory provision governing transfers of entire military airports to state or local agencies for their use as public airports. The right of such transferees is subordinate to the priority of Federal agencies to acquire the property for their own use. Airport property will not be disposed of for any other non-Federal use until every reasonable effort has been made to dispose of it for airport purposes.

(b) *Preliminary procedures.* (1) Request a determination by the Administrator of the FAA that the surplus land is essential, suitable or desirable for the development, improvement, operation or maintenance of a public airport as required by 50 U.S.C. 1622(g)(1).

(2) Upon receipt of a determination by the Administrator of FAA, furnish

the FAA Regional Office with a description of the property, or a copy of the Standard Form 118 if the property has been reported to GSA for screening, together with a list of the operating and maintenance equipment available for disposal with the airfield, and request that a survey under the Surplus Property Act be made and that, based thereon, recommendations for classification of the property under the Act be furnished.

(c) *Classification.* District Engineers are authorized to approve ENG Form 1825, Real Property Classification, based on FAA recommendations. Generally, the recommendations of FAA in regard to classification of property, will be followed, except the following will be forwarded to DAEN-REM without final classification action: cases involving reduction in land areas, runways, taxiways, etc.; controversial cases; and cases where changes in the reservations, restrictions, or conditions specified in the Act are recommended by FAA. District Engineers will not classify as airport property, property in excess of that recommended by FAA or property of which the highest and best use is determined to be industrial. Where the District Engineer does not agree with the report of FAA, he will immediately submit complete data setting forth all objections to the report, together with his recommendations, to DAEN-REM.

(d) *Notice of availability.* Upon classification of the property as airport property, notice of the proposed disposal will be sent by certified mail to the political subdivisions, or municipalities in which the property is located, and also to any other state, political subdivision, municipality, or tax-supported institution which the District Engineer has reason to believe may be interested in the property. A reasonable time will be allowed eligible agencies to submit an acceptable application. Figure 11–6 in ER 405–1–12 is a format for use in preparing the notice.

(e) *Advertising.* The proposed disposal of airport property will be advertised in at least two newspapers of general circulation within the state in which the airport is located. This advertising will insure notification to political subdivisions, tax-supported institutions, and others that the property is available. Property not classified as airport property will be advertised in accordance with the applicable requirements for the type of property. However, the first advertising of non-airport property adjacent to an airport will contain a statement that the property may be acquired under section 13(g) of the Surplus Property Act of 1944, as amended, for airport purposes, provided FAA approves such acquisition.

(f) *Form of application.* Public agencies desiring to acquire surplus airport property will be required to submit an Application For Airport Property (Figure 11–7 in ER 405–1–12). The application includes the provisions of section 13(g) of the Surplus Property Act of 1944, as amended. If the applicant desires to enter and use the property prior to conveyance, such other terms and conditions considered desirable and necessary governing interim use of the property by the applicant will be included. The application will be signed by the applicant and forwarded to DAEN-REM for acceptance by proper authority in the Department. Evidence of the applicant's legal and financial ability to maintain and operate the property, as proposed, will also be submitted with the application.

(g) *Request for modifications in the provisions of section 13(g) of the Surplus Property Act of 1944, as Amended.* Should an applicant request modifications in the restrictions and conditions imposed by section 13(g) of the Surplus Property Act of 1944, as amended, the application and all pertinent data, including the FAA report, will be forwarded to DAEN-REM. If the requested modification is approved, the case will again be referred to FAA for its recommendation. If FAA does not concur in the modification, the fact will be reported to DAEN-REM for further necessary action.

(h) *Personal property.* Non-industrial personal property of any other nature or description made available for disposal with an airport and located on it may be transferred with the airport on recommendation by FAA.

(i) *Meetings with public bodies.* Close cooperation will be maintained with

FAA, and its representatives will be invited to participate in negotiations with public bodies in connection with transfer of airport property.

(j) *Land survey.* In the event that a property survey is required to establish a correct metes and bounds description of the land to be transferred as airport property, a survey will be provided by the prospective transferee without cost to the Government.

(k) *Transfer instruments.* The type of instrument used in conveying or transferring the Government's interest will vary according to the type of property that may be involved, *i.e.*, wholly Government-owned, mixed owned and leased, and leased property. However, instruments of conveyances will contain provisions required by the Surplus Property Act of 1944, as amended. Where a lease is involved and it is from other than the prospective transferee, such transferee will be required to obtain a long term lease on the land prior to conveyance of the Government-owned improvements. Execution of the lease to the prospective transferee and acceptance of the application by the Government should be handled simultaneously. Figure 11–8 in ER 405–1–12 is a format of quitclaim deed covering fee-owned and leased land (Airport Property). A quitclaim deed can be used to surrender leased land and convey the improvements and related personal property, or this can be done by supplemental agreement to the lease or other type of contract as considered desirable in accordance with local conveyancing practices.

(l) *Recordation.* All transfer instruments will be recorded by and at the expense of the transferee.

(m) *Compliance.* The Administrator, FAA, is responsible for determining and enforcing compliance of conditions and restrictions contained in any instrument of disposal of airport property, and is authorized to reform, correct, or amend any such instrument for such action as deemed necessary by him under applicable law. Care will be exercised to furnish copies of the application, classification, and instrument of conveyance to FAA so that it can properly perform its compliance function.

§ 644.429 Wildlife purposes.

(a) *Authority.* The military departments, when acting as a disposal agency, are authorized under the provisions of 16 U.S.C. 667b-d, in connection with land and improvements that:

(1) Can be utilized for wildlife conservation purposes by the agency of the state exercising administration over the wildlife resources of the state wherein the real property lies, or by the Secretary of the Interior; and (2) are chiefly valuable for use for any such purpose and which, in the determination of the GSA is available for such use, to convey such property to such agency without reimbursement or transfer of funds if the management thereof for the conservation of wildlife relates to other than migratory birds, or to the Secretary of the Interior if the property has particular value in carrying out the national migratory bird program. Personal property cannot be conveyed or transferred under this authority and only such improvements as the District Engineer determines to be necessary for proper execution of the applicant's program may be conveyed.

(b) *Notice of availability.* If property is considered by the District Engineer to be valuable for wildlife conservation purposes, or if interest has been shown in acquiring the property for that purpose, notice of availability should be given to the agency administering state wildlife resources and to the Federal Fish and Wildlife Service if the property has particular value in carrying out the national migratory bird program.

(c) *Classification—Factors to be considered and determinations to be made by disposal agency.* Should the property be classified as being chiefly valuable for purposes other than wildlife conservation purposes, such as agricultural, commercial, etc., the property may not be transferred to any State or to the Department of the Interior, under the authority cited in paragraph (a) of this section. However, should an application be received for conveyance of the property for wildlife conservation purposes, and the classification of the property indicates that it is chiefly valuable for other purposes, the classification, all pertinent papers and the

application, together with the Division Engineer's recommendation, will be forwarded to HQDA (DAEN-REM), Washington, DC 20314. In addition to the determination that the property is chiefly valuable for wildlife conservation purposes and is available for such use, the Division Engineer will determine, when recommending that property be conveyed for such use, that the applicant has the legal and financial ability to acquire, operate and maintain the property as proposed, and will furnish information to DAEN-REM to support his opinion. With proper safeguards, contaminated property can be made available for use in the wildlife conservation program.

(d) *Application.* Any state desiring to make application for property for wildlife conservation will be furnished copies of Application For Real Property For the Conservation of Wildlife with accompanying instructions for preparation. In evaluating the application, the responsible District Engineer will request review of the application by the Regional Office of the Fish and Wildlife Service, Department of the Interior, and will obtain that Service's recommendation as to the value of the property for wildlife conservation purposes.

(e) *Instrument of conveyance.* Any instrument of conveyance of property for wildlife conservation will contain the restrictions and conditions required by 16 U.S.C. 667b, c, d. A Sample Deed for Conveyance of Land and Improvements For Conservation of Wildlife, with the statutory restrictions and conditions is provided as Figure 11–10 in ER 405–1–12.

(f) *Publication of order.* The order required to be published in the FEDERAL REGISTER after disposal of the property under this authority will be processed for publication by the Chief of Engineers.

§ 644.430 Shrines, memorials, or religious purposes.

Pursuant to the provisions of FPMR 101–47.308–5, when the Department, acting as a disposal agency, determines that a chapel may properly be used in place, a suitable area of land may be sold with the chapel for use as a shrine, memorial, or for religious purposes. The sale price of land for this purpose will be its fair market value based on its highest and best use as established by an appraisal. Deeds conveying lands for such purposes will contain no restriction on the use of the land. Sale of the chapel building will be subject to the procedure and terms and conditions provided in §§ 644.472 through 644.500.

§ 644.431 Power transmission lines.

(a) *Authority.* Pursuant to the provisions of section 13(d) of the Surplus Property Act of 1944, as amended (50 U.S.C., App. 1622(d)), any state, or political subdivision thereof, or any state or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right of way acquired for its construction is needed for or adaptable to the requirements of a public or cooperative power project. Whenever any property is reported to GSA for screening, it will be assumed that GSA has screened Federal agencies for such purpose and no further screening with such agencies is necessary. Property not reported to GSA for screening will be screened in accordance with §§ 644.333 through 644.339. Screening with the appropriate state agencies will be conducted in all cases.

(b) *Procedure.* Whenever a State, or political subdivision thereof, or state or Federal agency or instrumentality certifies that such property is needed for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at its appraised fair market value. In the event that a sale cannot be consummated and the certification is not withdrawn, such facts will be reported to DAEN-REM in order that a determination of the action to be taken may be obtained from the Administrator, GSA. If no certification from a state or Federal instrumentality as outlined above is received after proper notice is given, the property may be disposed of in the same manner as other excess or surplus real property.

§ 644.432 Assignment to Department of Health, Education, and Welfare (HEW) or successor agencies for health or educational purposes.

(a) *Authority.* Under section 203(k)(1) of the Federal Property Act of 1949, as amended (40 U.S.C. 484(k)(1)) the Administrator, GSA is authorized, under such regulations as he may prescribe and in his discretion, to assign to the Secretary of HEW for disposal, such surplus real property as is recommended by the Secretary of HEW as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research. The Secretary of HEW is authorized under section 203(k)(1), subject to disapproval by the Administrator, GSA after notice to him from the Department of Health, Education, and Welfare (HEW), to sell or lease surplus real property for such purposes. Pursuant to FPMR 101–47.308–4, a military department, when acting as disposal agency is authorized to assign property to HEW for disposal for education or health purposes and to disapprove, within 30 days after notice, any transfer of property proposed to be made by HEW for such purposes.

(b) *Notice to Department of Health, Education, and Welfare or Successor Agencies.* When real property is reported to GSA for screening prior to disposal by the military department, notification will be given HEW by the GSA Regional Office simultaneously with notification to the District Engineer that the property has been determined surplus to Federal requirements. The District Engineer will furnish such notification directly to the appropriate regional representative of the Department of HEW in the case of nonreportable real property immediately after he determines that the property is surplus to Federal requirements. Such notification will include the following information:

(1) A brief description of the property in sufficient detail to enable a determination of its probable suitability for uses authorized in section 203(k)(1) of the Act.

(2) When the property may be inspected and where and how arrangements may be made for inspection of the property.

(3) That the property will be withheld from advertisement for bids for a period of 20 days from the time of the notification unless the office submitting the notification is sooner informed in writing as to whether the property is needed for school, classroom, or other educational use, or for use in the protection of public health, including research. If within that time notice is received of a known potential need, the property will be held for an additional 45 days or until a certification of need or request for assignment is received, whichever occurs first.

(4) The District Engineer shall not give such notification to HEW on surplus buildings and improvements located on surplus leaseholds where their removal from the site will increase the Government's restoration obligations under the lease. Where such a situation exists and GSA is to screen the property prior to disposal by the Department, GSA should be advised to this effect. Where any surplus buildings and improvements (on leaseholds or fee-owned land) are available for off-site disposal, notification will be given HEW (unless time restrictions prohibit as set out in §§ 644.333 through 644.339 and §§ 644.348 through 644.367) but the notification will include the same restoration obligations as would be placed in a sale of the property to a private party.

(5) During the 20-day period, action will be taken preparatory to advertising the property for sale. All inquiries received concerning acquisition of the property for such purposes from the state, or local agencies, or qualified organizations seeking the purchase of available real property for health or educational purposes will be referred to the appropriate field representatives of HEW. If, within the 20-day period, HEW shall inform the District Engineer of any known potential requirement, the District Engineer will withhold disposition until a certification of need is received but not to exceed 45 days.

(6) Upon receipt from HEW of a certification that the property is needed for educational or public health purposes and a request from HEW for assignment of the property, if the property is available for such purposes, it

will be assigned by the responsible District Engineer by letter addressed to the HEW office from which the request for assignment was received, citing the Act and GSA regulations as authority therefor. A copy of such letter of assignment will be furnished to the Regional Office of GSA.

(7) When notification of the proposed disposal is received from HEW, subsequent to assignment, if their is no reason for disapproval of the proposed disposition, notice from the responsible District Engineer to HEW of approval thereof is not necessary. Under section 203(k)(1), approval is automatically given in the absence of notice of disapproval within 30 days from the date of notification of the proposed disposal. If in the request for assignment HEW furnishes the name of the proposed transferee and states that an application from the transferee is on file and that the proposed use by the transferee is one authorized under section 203(k)(1), the District Engineer, in making the assignment to HEW, may state that no objection is interposed to the proposed transfer of the property.

(8) GSA has advised that it is not anticipated that the Corps of Engineers, in acting as the disposal agency, would investigate each request to it by the Department of HEW, because to make such investigations in each case would clearly duplicate the function assigned to the Department of HEW. Doubtful cases would only arise in connection with property for which the highest and best use is industrial or commercial, or where further study may be required by the Federal Government concerning future requirements for the property. In accordance with a further suggestion by GSA, where there is a reasonable doubt as to the propriety of an assignment to HEW or a proposed disposal by it, the request will be referred to GSA for final decision. Such referrals will be made through DAEN-REM.

(9) The District Engineer making the assignment of the property will request HEW to furnish two copies of the sales contract. Upon receipt of these copies, together with a request from HEW that the property be transferred, custody will be given to the grantee or transferee named in the sales contract.

§ 644.433 Surplus disposal to private parties.

General. Sections 644.435(b) through 644.440 cover general procedures for the sale of surplus fee-owned land and easement interests and includes actions to be taken preliminary to proceeding with the appropriate sale procedures set forth in §§ 644.540 through 644.557.

§ 644.434 Cottage site disposal.

Disposal of lots for cottage site development and use is authorized by Pub. L. 84–999 (16 U.S.C. 460e). No new allocations of land for private cottage use will be made. The policy concerning phasing out of existing cottage site areas is set out in ER 1130–2–400. The DE has delegated authority to sell or lease cottage sites. Contract of Sale, ENG Form 3297–R, will be used.

§ 644.435 Procedure.

(a) *Fee-owned land.* When fee-owned land for which the department is acting as disposal agency has been found to be surplus to requirements of the Federal Government, has been classified under § 644.426 and disposal is not made to a state, political subdivision, etc., the property will be offered for sale to the highest responsible bidder, except under special circumstances provided in §§ 644.540 through 644.557.

(b) *Easements.* Easements that are readily assignable will be disposed of in the same manner as fee-owned land. Easements will usually be disposed of with land to which they are appurtenant. Easements may be disposed of to the owner of land which is subject to the easement (the servient estate). A determination should be made as to whether the disposal should be with or without reimbursement to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost to the Government. The amount of such reimbursement should be the appraised fair market value of the easement. In the case of disposal of an easement acquired for the deposit of spoil material a minimum charge of $225.00 will be imposed where relinquishment is being accomplished for the benefit of the owner of the servient estate and where no direct benefit will inure to the Government. A statement as to the

commercial value will be made when recommending an easement for disposal. The circumstances and factors leading to these determinations shall be documented and retained in the files (FPMR 101–47.313–1).

§ 644.436 Appraisal.

Under the usual circumstances prompt action will be taken to appraise surplus property concurrently with its classification. Appraisals will not be undertaken for property which has been or is likely to be classified for disposal for any of the following purposes: airport; wildlife conservation; public highways, streets and alleys; disposal to the District of Columbia; and property assigned to HEW for disposal. Property that is to be disposed of for other than the above listed purposes will be appraised.

§ 644.437 Disposal plan for fee-owned land.

A disposal plan will be made for each surplus property. It will include the District Engineer's recommendation of the method or methods of disposal and the reasons therefor; for example, whether improvements or minerals and lands should be sold separately; improvements cannibalized; whether the property should be subdivided; the media for advertising; and other pertinent factors. In addition, the following will be included as part of the disposal plan:

(a) Description and map of the lands.

(b) Description of buildings and other improvements.

(c) Appraisal made in accordance with §§ 644.41 through 644.49, unless exempted by § 644.436.

(d) Information as to when, from whom, and how the property was acquired.

(e) Information as to the estate which the Government has in the land, and reservations and exceptions in and to the Government's title. Outstanding interests granted by the Government or reserved or excepted in the acquisition of the lands will be stated with particularity. The map or plat will delineate any grant, exception, or reservation, such as telephone and telegraph, electric transmission, oil, gas and water lines.

(f) Purchase price of land, buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(g) If there is an indication of valuable minerals, such statement will be made with full explanatory data.

(h) Where the estimated value of the land together with improvements and related personal property is in excess of $1,000, the disposal plan will be submitted to DAEN-REM for approval.

§ 644.438 Disposal plan for easements.

When recommending disposal of a surplus easement the District Engineer will submit the following:

(a) Information as to when and from whom the easement was acquired.

(b) The consideration paid therefor.

(c) Identification of the installation to which it is appurtenant.

(d) If the easement has no commercial value, the amount that should be paid by the owner of the servient estate, representing a rebate on the purchase price, or the amount paid for severance damages will be specified. (For example, if the easement was acquired for a 15-year period and the price paid therefor was substantial and one year after acquisition it is returned to the owner of the servient estate, an effort should be made to obtain a rebate on the purchase price although the easement has no commercial value. The same would be applicable to the payment for severance damages).

(e) If the owner of the servient estate, or other prospective grantee, is not willing to pay the appraised value in consideration of the release of an easement acquired for a substantial consideration, all action to release the easement will be held in abeyance until such time as an adequate consideration can be obtained for the release. Note the minimum payment for release of spoil easments discussed in paragraph (b) of § 644.435.

§ 644.439 Sale and conveyance.

Sales procedure, including advertising, will be in accordance with §§ 644.540 through 644.557. Normally, conveyance will be by deed, prepared and executed as provided in § 644.441.

§ 644.440 Application of antitrust laws.

Section 207 of the Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more, or patents, processes, techniques, or inventions, regardless of costs, shall not be disposed of until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the antitrust laws. Prior to obligating the Government on any such disposal, the District Engineer will furnish DAEN-REM information on the probable terms or conditions. DAEN-REM will use this information as the basis for a request to the Attorney General for advice (FPMR 101–47.301–2).

§ 644.441 Preparation and execution of deeds.

(a) *Authority to execute.* All conveyances of fee ownership and other permanent interests in land which the Army and Air Force have authority to convey under the statutory authorities and delegations set forth in §§ 644.400 through 644.443 will be executed by the Secretary of the Army, for Army land, and by direction of the Secretary of the Air Force, for Air Force land. Conveyances of surplus property that have been assigned to HEW for disposal will be executed by officers of that department.

(b) *Form of deed or instrument.* Conveyances of fee-owned land and easements shall be by quitclaim deed prepared in conformance with local law and practice except where it is found that another form of conveyance is necessary or desirable to obtain a reasonable price for the property, or to render the title marketable, or for other reasons. Appropriate recommendations will be forwarded to DAEN-REM. Forwarding correspondence should contain information as to the requirements of local law for witnesses, acknowledgment, authentication of acknowledgment, and other special requirements. The instrument of conveyance should contain a statement that the requirements of 10 U.S.C. 2662 have been met, or that the conveyance is not subject to these requirements.

(c) *Authority for conveyance.* Authority for conveyance will be recited in the granting clause. Conveyances under the Federal Property Act will recite:

> * * * under and pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the delegation of authority to the Secretary of Defense from the Administrator of General Services Administration (41 CFR 101–47.601) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 FR 7113).

Conveyances to states and their instrumentalities under the special statutes, listed in §§ 644.425 through 644.432, will recite the special statutes, as continued in effect by the Federal Property Act and the delegations. Conveyances to states for wildlife conservation purposes under Pub. L. 537, 80th Congress (§ 644.429) will cite the special act and recite that the property has been determined surplus under the Federal Property Act and delegations thereunder. Conveyances releasing the restrictions contained in a flowage easement prohibiting the construction and maintenance of structures for human habitation should cite as authority for the conveyance the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the Federal Property Management Regulations (101–47.313–11).

(d) *Conditions in the conveyance.* The deed will contain the reservations, restrictions, or conditions, required by: (1) The directive which authorized the disposal; (2) any special acts under which the property is conveyed; and (3) by any contract of sale, agreement to extend credit, or relocation contract, pursuant to which conveyance is made.

(e) *Acceptance by grantee.* Where the instrument of conveyance imposes obligations on the grantee, the instrument will be executed and excepted by or on behalf of the grantee prior to forwarding for execution. If the grantee is a corporation or body politic, the instrument will contain a certificate attesting to the authority of the officer executing the instrument to act for and bind the corporation or body politic, and that his signature is genuine. Where a resolution or other special action is necessary to legally bind the

grantee, a copy will be attached to the instrument.

(f) *Execution of deed.* (1) The Division Engineer will forward to DAEN-REM a draft of the deed, prepared in final form, together with copies of as many of the items listed below as are appropriate depending on the nature and purpose of the conveyance, any other information necessary for a complete understanding of the case, and the remarks and recommendations of the Division and District Engineer. Upon approval of the proposed disposal by DAEN-REM, the deed will be forwarded to higher authority for execution and returned to the District Engineer for delivery and distribution.

(2) Items to be forwarded with draft of deed proposed for execution, as appropriate:

(i) Real Property Classification, ENG Form 1825.

(ii) Application or plan for use and procurement with recommendations and determinations of other interested Federal agencies when the conveyance is under one of the special acts listed in §§ 644.425 through 644.432.

(iii) Disposal plans.

(iv) Appraisal where not included in paragraph (f)(2)(iii) of this section.

(v) Statement on advertising conducted.

(vi) Abstract of bids.

(vii) Relocation contract or change agreement.

(g) *Distribution of deeds.* Deeds will be delivered by the District Engineer and recorded by or at the expense of the grantee. Upon delivery and recordation of any deed conveying Army, Air Force, or nondefense property, the District Engineer will conform two copies by endorsing thereon the date and manner of delivery, and the date, time and place of recordation in the public land records. One conformed copy will be forwarded to HQDA (DAEN-REM) WASH DC 20314, and the other conformed copy to HQDA (DAEN-REP) WASH DC 20314. This requirement extends to copies of deeds executed by other disposal agencies and furnished District Engineers pursuant to FPMR 101–47.307–3(b). Two additional copies of deeds delivered by District Engineers will be conformed and furnished any other Federal agency charged with compliance enforcement of any reservations, restrictions, or conditions in the deed.

§§ 644.442–644.443 [Reserved]

DISPOSAL OF LEASEHOLDS AND LEASEHOLD IMPROVEMENTS

§ 644.444 Authority.

Surplus leasehold interests in real property are disposed of under authority delegated by the General Services Administration (GSA) to the Department of Defense (DOD). DOD has redelegated this authority to the military departments. DEs, within the limits of the authority delegated, have been authorized to terminate leases, execute agreements in settlement of restoration obligations, and perform necessary restoration work required by lease terms, directly or by contract, in accordance with the provisions stated in §§ 644.444 through 644.471. Exceptions are where: (a) Under the terms of the lease the leasehold is transferable to third parties or Government-owned improvements on leased airport or other special types of leased property have an in-place value to the lessor for airport or other special purposes; or (b) the leasehold or Government-owned improvements may be disposed of to eligible public agencies under special statutes (FPMR 101–47.4905), in which cases the procedures provided in §§ 644.400 through 644.443 will be applied to the extent applicable. Disposals within the scope of the above exceptions require the prior approval of DAEN-REM.

§ 644.445 Procedure for termination of leases.

When leased premises are no longer required for use by the Government, a notice of termination will be given to the lessor in accordance with the terms of the lease, effective as of the date of vacation. The termination notice will be served sufficiently in advance to allow time for compliance by the Government with terms of leases providing for removal of improvements and restoration of premises. Where a lease does not contain provision for continuing renewal without notice and will automatically expire, the Government is not required to give notice