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# SUBCHAPTER J—REAL PROPERTY

## PARTS 641–642 [RESERVED]

## PART 643—REAL ESTATE

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## Subpart A—General

### § 643.1 Purpose.

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

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

### § 643.2 Applicability.

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

### § 643.3 Authority to grant use of real estate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### § 643.6 Responsibilities of overseas commanders.

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

### § 643.7 Preparation of report of availability.

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

### § 643.8 Approval of report of availability.

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

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

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

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

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

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

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

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

(h) A grant involving search for treasure trove;

(i) A grant for vehicle speed contests;

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

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

### § 643.9 Approval of availability outside the United States.

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

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

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

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

### § 643.11 Rights of entry.

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

### § 643.12 Preparation and signing of instruments.

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

### § 643.13 Military requirement for real estate under grant.

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

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

### § 643.14 Inspection to assure compliance with terms of outgrants.

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

### § 643.15 Unauthorized use.

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

## Subpart B—Policy

### § 643.21 Policy—Surveillance.

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

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

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

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

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

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

### § 643.23 Policy—Preference.

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

### § 643.24 Policy—Competition.

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

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

(b) Granting permits to other Federal agencies.

(c) Leasing cable pairs.

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

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

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

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

### § 643.26 Policy—Commercial advertising on reservations.

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

### § 643.27 Policy—Environmental considerations.

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

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

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

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

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

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

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

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

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

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

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

### § 643.28 Policy—Historic and cultural environment.

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

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

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

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

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

### § 643.29 Policy—Archeological surveys.

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

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

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

### § 643.31 Policy—Flood hazards.

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

### § 643.32 Policy—Endangered species.

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

### § 643.33 Policy—Coastal zone management.

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

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

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

### § 643.34 Policy—Public utilities on installations.

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

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

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

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

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

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

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

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

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

### § 643.37 Policy—Requests to search for treasure trove.

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

### § 643.38 Policy—Utility rates.

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

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

### § 643.39 Policy—American National Red Cross.

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

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

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

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

### § 643.41 Policy—National Guard use.

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

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

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

## Subpart C—Leases

### § 643.51 Additional items concerning leasing.

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

### § 643.52 Term.

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

### § 643.53 Consideration.

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

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

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

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

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

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

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

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

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

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

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

### § 643.54 Receipts.

Receipts will be deposited into the Treasury as miscellaneous receipts.

### § 643.55 Mandatory revocation clause in lease.

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

### § 643.56 Taxation of lessee's interest.

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

### § 643.57 Sublease or assignment.

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

## Subpart D—Licenses

### § 643.71 Additional items concerning licenses.

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

### § 643.72 License.

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

### § 643.73 Term.

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

### § 643.74 Consideration.

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

## Subpart E—Easements

### § 643.81 Additional items concerning easements.

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

### § 643.82 Term.

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

### § 643.83 Consideration.

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

### § 643.84 Easement—Grantees relocate or replace needed facilities.

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

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

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

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

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

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

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

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

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

## Subpart F—Permits

### § 643.101 Additional items concerning permits.

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

### § 643.102 Permit.

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

### § 643.103 Term.

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

### § 643.104 Consideration.

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

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

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

## Subpart G—Additional Authority of Commanders

### § 643.111 Additional authority.

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

### § 643.112 Army exchange activities.

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

### § 643.113 Banks.

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

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

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

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

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

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

### § 643.114 Civil disturbances.

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

### § 643.115 Contractors—Permission to erect structures.

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

### § 643.116 Credit unions.

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

### § 643.117 Hunting, trapping, and fishing.

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

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

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

### § 643.119 Licenses incidental to post administration.

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

### § 643.120 Post offices.

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

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

### § 643.121 Private organizations on DA installations.

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

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

### § 643.122 Reserve facilities—Air Force and Navy use.

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

### § 643.123 Reserve facilities—Local civic organizations.

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

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

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

### § 643.125 Trailer sites.

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

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

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

### § 643.126 Transportation licenses.

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

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

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

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

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

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

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

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

### § 643.127 Quarters.

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

### § 643.128 Veterans' conventions.

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

### § 643.129 Youth groups.

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

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

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

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

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 3012, unless otherwise noted.

SOURCE: 44 FR 3168, Jan. 15, 1979, unless otherwise noted.

## Subpart A—Project Planning

### § 644.1 Preface.

Subpart A sets out basic procedures to be followed in planning and scheduling for the acquisition of lands in connection with Military and Civil Works projects. It is not intended to be taken as absolute, without modification, but more as a guide to insure all aspects involved and potential problems are fully considered in planning for the acquisition of additional lands. Proper planning in the initial stages of any project can and should eliminate unnecessary delays during the acquisition phase.

CIVIL WORKS

### § 644.2 General.

(a) *Purpose.* Sections 644.2 through 644.8 describe the authorities and procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for all water resource projects.

(b) *Applicability.* These sections are applicable to all Division and District Engineers having civil works real estate responsibilities.

(c) *River and harbor and flood control projects*—(1) *River and Harbor Projects.* The Act of Congress approved April 24, 1888 (33 U.S.C. 591) authorizes acquisition of land for river and harbor purposes. These include the construction, operation, maintenance and improvement of both natural and artificial waterways, the construction of locks and dams, dikes, bulkheads, jetties, revetment and other bank protection works, and spoil disposal dikes and retaining structures for construction and maintenance. Unless otherwise specified by Congress, local interests furnish, free of cost to the United States, all lands, easements and rights-of-way required for initial construction, operation and subsequent maintenance. A cash contribution may also be required if enhancement of land values results from disposal of spoil dredged from project areas (ER 1150–2–301 and EM 1120–2–101).

(2) *Flood control projects.* The Act of Congress approved March 1, 1917 (33 U.S.C. 701) authorizes acquisition of land for flood control purposes, and section 2 of the Act of Congress approved June 28, 1938, as amended (33 U.S.C. 701c–1), authorizes the acquisition of land and interests therein for dam and reservoir projects, channel improvements, and rectification projects for flood control at Federal expense. Dam, reservoir and lake projects are generally constructed entirely at the expense of the United States and are maintained and operated with the use of Federal funds. Local interests are not required to furnish lands, easements and rights-of-way for dam and reservoir projects, unless specifically authorized by law for small reservoirs which provide localized flood protection (EM 1120–2–101). For local flood protection projects, except channel improvement or channel rectification projects authorized by the Flood Control Acts of 1936, 1937 and 1938, local interests must provide, without cost to the United States, all necessary lands, easements, and rights-of-way. They must also hold and save the United States free from damages due to the construction, operation and maintenance of the project, except where such damages are due to the fault or negligence of the United States or its contractors, and maintain and operate all the works after completion, in accordance with regulations prescribed by the Secretary of the Army. Channel improvement and channel rectification projects authorized by the Acts of 1936, 1937 and 1938 are built entirely at Federal expense and no local cooperation is required. Exceptions to these rules are provided by law in the case of certain specific projects such as hurricane protection, shore protection, beach erosion control or other purposes. As in river and harbor projects, a cash contribution may also be required if enhancement of land values results from disposal of spoil dredged from project areas (ER 1150–2–301 and EM 1120–2–101).

(d) *The navigational servitude.* As a general rule the United States does not acquire interests in real estate which it already possesses or over which jurisdiction is or can be legally exercised. Irrespective of the ownership of the banks and bed of a stream below ordinary high water mark, and irrespective of western water rights under the prior

appropriation doctrine, no further Federal interest is required for navigation projects in navigable streams below the ordinary high water limit. It is required, therefore, that the acquisition plan consider the extent of the navigational servitude.

(1) ER 1165–2–302 contains the practice and procedures regarding navigation.

(2) The navigational servitude affects abutting uplands, in that the special site value attributable to their location near a navigable stream is noncompensable. However, this has been partially changed by section 111 of Pub. L. 91–611. In all cases where real property is acquired by the United States for public use in connection with any improvements of rivers, harbors, canals or waterways of the United States, the compensation to be paid shall be the fair market value of such real property based upon all uses to which such real property may reasonably be put, including its highest and best use, any of which uses may be dependent upon access to or utilization of such navigable waters. In cases of partial acquisitions of real property, no depreciation in the value of any remaining real property shall be recognized, and no compensation shall be paid for any severance to the remaining real property which results from loss of or reduction of access from the remaining real property to the navigable waters because of the acquisition of real property or the purposes for which the real property is acquired.

(3) Injury to private property within or abutting non-navigable streams is compensable if inflicted in the course of an exercise of the navigation power limited to the navigable mainstream. *U.S.* v. *Kansas City Life Ins. Co.*, 339 U.S. 799 (1950), *U.S.* v *Cress*, 243 U.S. 316 (1917).

(e) *Buildings.* Buildings for human occupancy, as well as other structures which would interfere with the operation of the project, or which would be substantially damaged by inundation, are prohibited below the guide acquisition line unless otherwise specifically approved by the Chief of Engineers.

(f) *Estates.* Standard estates for acquisition of land or interests therein are contained in subpart C. Non-standard estates should be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for approval.

### § 644.3 Navigation projects.

(a) *Land to be acquired in fee.* All lands necessary for permanent structures, construction areas, public access areas and fish and wildlife purposes will be acquired in fee. No interests need be acquired in areas subject to the Government's right of navigational servitude. Spoil disposal areas may be acquired in fee upon approval of HQDA (DAEN-REA-P).

(b) *Lands over which easements are to be acquired.* (1) Permanent easements are required for channel improvements, navigation pools, navigation aids, and spoil disposal areas for future maintenance. Requirements for navigation aids should be coordinated by the District Engineer with the local Coast Guard District Commander.

(2) Temporary easements may be acquired for temporary disposal of spoil, and temporary construction and borrow areas.

(3) In navigation-only projects, the right to permanently flood should be acquired in all lands located within the navigation pool and the right to occasionally flood should be acquired in lands above the pool. However, when the area to be occasionally flooded above the navigation pool consists of a narrow band of land, the right to permanently flood may be taken therein, to avoid acquisition of two different estates from the same ownership, and/or to reduce overall costs of acquisition.

### § 644.4 Reservoir projects.

(a) *Joint land acquisition policy for reservoir projects.* The joint policies of the Department of the Interior and the Department of the Army, governing the acquisition of land for reservoir projects, are published in the FEDERAL REGISTER, dated February 22, 1962, Volume 27, page 1734. On July 2, 1966, the Joint Policy was again published in 31 FR 9108 as follows:

A joint policy statement of the Department of the Interior and the Department of the Army was inadvertently issued as a Notice in 27 FR 1734. Publication should have been made as a final rule replacing regulations then appearing in 43 CFR part 8. The

policy as it appears in 27 FR 1734 has been the policy of the Department of the Interior and the Department of the Army since its publication as a Notice and is now codified as set forth below.

JOINT POLICIES OF THE DEPARTMENTS OF THE INTERIOR AND OF THE ARMY RELATIVE TO RESERVOIR PROJECT LANDS

Sec.
8.0 Acquisition of lands for reservoir projects.
8.1 Lands for reservoir construction and operation.
8.2 Additional lands for correlative purposes.
8.3 Easements.
8.4 Blocking out.
8.5 Mineral rights.
8.6 Buildings.

AUTHORITY: The provisions of this Part 8 issued under Sec. 7, 32 Stat. 389, sec. 14, 53 Stat. 1197; 43 U.S.C. 421, 389.

8.0 *Acquisition of lands for reservoir projects.* Insofar as permitted by law, it is the policy of the Departments of the Interior and of the Army to acquire, as a part of reservoir project construction, adequate interest in lands necessary for the realization of optimum values for all purposes including additional land areas to assure full realization of optimum present and future outdoor recreational and fish and wildlife potentials of each reservoir.

8.1 *Lands for reservoir construction and operation.* The fee title will be acquired to the following:

(a) Lands necessary for permanent structures.

(b) Lands below the maximum flowage line of the reservoir including lands below a selected freeboard where necessary to safeguard against the effects of saturation, wave action, and bank erosion and to permit induced surcharge operation.

(c) Lands needed to provide for public access to the maximum flowage line as described in paragraph 1b, or for operation and maintenance of the project.

8.2 *Additional lands for correlative purposes.* The fee title will be acquired for the following:

(a) Such lands as are needed to meet present and future requirements for fish and wildlife as determined pursuant to the Fish and Wildlife Coordination Act.

(b) Such lands as are needed to meet present and future public requirements for outdoor recreation, as may be authorized by Congress.

8.3 *Easements.* Easements in lieu of fee title may be taken only for lands that meet all of the following conditions:

(a) Lands lying above the storage pool.

(b) Lands in remote portions of the project area.

(c) Lands determined to be of no substantial value for protection or enhancement of fish and wildlife resources, or for public outdoor recreation.

(d) It is to the financial advantage of the Government to take easements in lieu of fee title.

8.4 *Blocking out.* Blocking out will be accomplished in accordance with sound real estate practices, for example, on minor sectional subdivision lines; and normally, land will not be acquired to avoid severance damage if the owner will waive such damage.

8.5 *Mineral rights.* Mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access.

8.6 *Buildings.* Buildings for human occupancy as well as other structures which would interfere with the operation of the project for any project purpose will be prohibited on reservoir project lands.

(b) *Application of joint policy by Corps of Engineers.* In order to assure that the water and land areas of reservoirs constructed by the Corps are available to the public, the lands which provide access along the shore of the reservoir will be supplemented at selected locations for concentrated public use. Where projects have either recreation or fish and wildlife, or both, as project purposes, additional lands will be acquired as set out in the authorization and specified in design memoranda. The policy contemplates that the United States own in fee a continuous area of land around the reservoir above the water level to insure ready access along the shore. However, certain exceptions have been adopted, as set forth hereinafter. Under the Joint Policy the Corps will take an adequate interest in lands, including areas required for public access, to accomplish all of the authorized purposes of the project and thereby obtain maximum public benefits therefrom. The statements in the policy which define the land interests to be acquired in particular areas are guidelines in application of policy.

(1) *Land to be acquired in fee.* (i) Lands necessary for the dam site, construction areas and permanent structures.

(ii) The lands below a guide contour line (guide acquisition line) established

with a reasonable freeboard allowance above the top pool elevation for storing water for flood control, navigation, power, irrigation, and other purposes, referred to in this paragraph as the ''full pool'' elevation. In nonurban areas generally, this freeboard allowance will be established to include allowances for induced surcharge operations plus a reasonable additional freeboard to provide for adverse effects of saturation, wave action and bank erosion. Factors such as estimated frequency of occurrence, probable accuracy of estimates, and relocation costs, will be taken into consideration. Where this freeboard does not provide a minimum of 300 feet horizontally from the conservation pool, defined as the top of all planned storage not devoted exclusively to flood control, then the guide acquisition line will be increased to that extent. In the vicinity of urban communities or other areas of highly concentrated developments, the total freeboard allowance between the full pool elevation and the acquisition line may be greater than prescribed for nonurban areas generally, and shall be sufficient to assure that major hazards to life or unusually severe property damages would not result from floods up to the magnitude of the standard project flood. In such circumstances, however, consideration may be given to easements rather than fee acquisition for select sections if found to be in the public interest. However, when the project design provides a high level spillway, the crest of which for economy of construction is substantially higher than the storage elevation required to regulate the reservoir design flood, the upper level of fee acquisition will normally be at least equal to the top elevation of spillway gates or crest elevation of ungated spillway, and may exceed this elevation if necessary to conform with other criteria prescribed herein.

(iii) Lands to be acquired for public use, being those reflected in the Recreation Resources Appendix of the Phase I General Design Memorandum (ER 1120–2–400). The Phase I General Design Memorandum is required to be prepared and submitted for approval prior to submission of the Real Estate Design Memorandum.

(iv) Lands required for operation and maintenance of the project for:

(A) Frequently used operational areas.

(B) Clearing and disposition of debris.

(C) Maintenance, repair, and restoration.

(D) Anticipated erosion.

(E) Safeguarding public health, and malaria and mosquito control.

(F) Sanitation.

(v) Lands specifically authorized by the Congress for recreation and fish and wildlife purpose as defined by the Federal Water Project Recreation Act (Pub. L. 89–72) and Fish and Wildlife Coordination Act of 1958 (Pub. L. 85–624, 16. U.S.C. 661 *et seq*).

(A) All lands to be acquired for fish and wildlife purposes, either mitigation enhancement lands or estates therein required for other project purposes, will be presented in such a way as to distinguish clearly all such lands under each of the separate authorities involved. Specific guidance on fish and wildlife resources is contained in ER 1120–2–400 and ER 1120–2–404.

(B) The purpose of Pub. L. 89–72 is to provide a uniform policy with respect to recreation and fish and wildlife benefits and costs of Federal multiple-purpose water resource projects, and for other purposes.

(*1*) Pub. L. 89–72, as amended by section 77 of Pub. L. 93–251, does, however, create a unique provision relating to local participation in the recreation and fish and wildlife developments in water resource projects. Provisions of that Act, as amended, must be adhered to and contracts for administration of project lands and cost-sharing shall follow the amendments contained in section 77 of Pub. L. 93–251.

(*2*) Section 3(b) of Pub. L. 89–72 further provides that, notwithstanding the absence of an indication of intent as specified above, lands may be provided in project planning which would preserve the recreation and fish and wildlife potential of the project for *subsequent* development by local interests. The act prescribes that local interests must within 10 years after initial operation of the project enter into agreements specified above. In the event such agreements are not obtained, the

proposed facilities cannot be constructed and the Corps may utilize the lands acquired for any lawful purpose within the Corps' jurisdiction or may offer said land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value at the time of disposal. In the event that an agreement with the prior owner or his heirs cannot be reached in 90 days, disposal of the property will ensue pursuant to usual disposal procedures.

(*3*) The provisions of Pub. L. 89–72, as amended, are construed to apply to planning for projects authorized in 1965 or thereafter. Accordingly, all planning for future projects must be coordinated with local interests as defined in the law and all design memoranda relating to land acquisition or development of recreation or fish and wildlife areas must clearly set forth the potential of the project for such development and the intent of local interests in fulfilling the requirements of this law.

(*4*) Public Law 89–72, as amended, does not impose a requirement for local participation in all recreation and fish and wildlife areas. Development of recreation areas and planning for fish and wildlife areas will be in accordance with the guidelines set forth in this Chapter and related regulations.

(vi) Lands for resource preservation and/or enhancement in fulfillment of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852) and Executive Order 11514 will be those approved in the authorizing document and/or those approved in the Recreation Resources Appendix of the General Design memorandum.

(vii) Uneconomic remnants required to be purchased in fee under section 301(9) of Pub. L. 91–646.

(viii) Recommendations may be made in the Real Estate Design Memorandum to eliminate lands from acquisition located within the approved guide acquisition line but above the guide contour line which are highly developed or devoted to public uses such as parks, golf courses, cemeteries, etc. Also, where for reasons of steep terrain, presence of highways and railroads, severe severance, or for other reasons, sound real estate practice indicates requirement for some adjustments in the area above the guide contour line, recommendations for such adjustments will be included in the real estate design memorandum, or will be subsequently submitted with proposed final real property acquisition lines, for approval of the Division Engineer in accordance with § 644.7.

(ix) Lands which will be covered by any sediment delta that is expected to form as the result of aggradation of streams draining into the reservoir. The estimate of this area shall be based upon the probable sediment inflow for a period at least equal to the economic life of the project.

(2) *Lands over which easements are to be Acquired.* (i) Lands in reservoir areas of flood-control-only projects, which do not provide conservation pools, except as required for public access.

(ii) Lands required for a relatively short time for temporary structures or for use during the construction period only.

(iii) The Joint Policy of 1962 provides that flowage easements *may* be acquired in reservoir projects if *all* four conditions of Section 8–3 of the Joint Policy are met. For the purposes of land acquisition, to distinguish between fee and flowage easement ''remote portions of the project area'' as referred to in Section 8–3 of the Joint Policy are defined as those lands lying upstream from the conservation pool (the top elevation of all storage other than that devoted exclusively to flood control use) on the main stream and all significant tributaries thereof.

(iv) Lands downstream from the dam and required only for operational purposes.

(v) In flood control projects which do not have conservation pools, the right to occasionally flood should be acquired in all lands, except that the right to permanently flood should be acquired in those lands which may be subjected to permanent flooding, as in the case of a trash pool.

(3) *Levees in lieu of acquisition.* Where construction of levees or flood walls and necessary associated facilities for protection of lands and properties located within potential flowage limits of a reservoir is proposed in lieu of acquisition of fee title or easements over

such properties, the protective structures shall meet the following minimum functional requirements:

(i) In urban communities or other areas of highly concentrated developments where overtopping of levees would result in major hazards to life or unusually severe property damage under anticipated future conditions, levee grades and designs shall be adequate to withstand without failure the occurrence of the standard project flood, assuming the reservoir is filled to highest level that is reasonably likely to prevail at the beginning of such a flood.

(ii) Under circumstances where it can be reasonably shown that possible overtopping of protective levees or flood walls as proposed would not result in unusual hazards to life or major property damage, levee grades shall be as high as economically practicable in consideration of apparent risks and costs involved, and flowage easements or other appropriate assurances from local interests shall be obtained insofar as necessary to protect the Government in the event the protective structures are overtopped.

### § 644.5 Mineral acquisition practices.

(a) *Procedure.* The procedure of the Corps of Engineers in acquiring the necessary land or interests therein to accommodate projects authorized by the Congress is to permit the reservation of the minerals in the land, unless the reservation is inimical to the operation of the project. In all cases wherein a reservation is permitted, the mineral interests are subordinated to the primary project purposes, including public access and preservation of environmental quality.

(b) *General.* (1) The multiplicity of ownerships in mineral interests, the variety of minerals and the different methods of mineral exploration, recovery and production make it impracticable to define in advance specific guidelines concerning the reservation of mineral interests and their subordination to primary project purposes in any given project. The initial planning documents, real estate design memoranda, and master plans will fully discuss and consider the extent of acquisition and/or reservation of mineral interests.

(2) Generally fee title to all subsurface interests will be acquired in areas required for all structures, areas required for project operations and public use including access, and in areas where the value of the subsurface interests is nominal. Reservation of coal, oil, gas and other minerals will be permitted whenever any aspect of mineral development will not interfere with project purposes. The reservation of mineral rights will be predicated upon the Government's right to so regulate their development as to eliminate any interference with project purposes and to minimize any adverse impact on the environment including aesthetic values.

(c) *Reservation of minerals.* (1) When it has been determined that the reservation of minerals will not interfere with the purposes of the project, the minerals will be subordinated in accordance with the following guidelines:

(i) The estate providing for the subordination will not be utilized unless approved by HQDA (DAEN-REA).

(ii) Any subordination agreement, together with additional regulations incorporated by reference, must clearly define:

(A) The rights and obligations of the Government and the mineral owner, operator, and/or lessee.

(B) The control to be exercised over site development for mining purposes.

(C) Required land reclamation or restoration.

(D) Restrictions against pollution and degradation of project environment and aesthetics.

(E) Provisions for compliance inspection by the Government of all site development and mining activities over which the Government has control under paragraph (c)(1)(ii)(B) of this section.

(2) After execution of a subordination agreement as provided above, the District Engineer will develop a program for the surveillance of mineral activities at each project.

(3) The representatives of the Division and District Engineers are to be fully informed concerning the rights and responsibilities of the Government and the mineral owner and/or operator

under the terms of the estates acquired for the subordination of minerals, and will periodically inspect all mining activities to insure compliance with the terms of the subordination agreement and any plan incorporated by reference into such agreement.

(d) *Off-project mineral activity*. In connection with all drainage basins, where there is present or potential mineral activity upstream from a project or nearby lands outside the project limits, the District Engineer will:

(1) Establish and maintain liaison with Federal and State agencies having responsibility for the regulation of mineral activities and the control of environment in order to prevent adverse effects of mining on the project.

(2) Institute a system for monitoring adverse effects on the project such as sedimentation and acid drainage.

(3) Take steps to insure that Corps personnel in charge of the project are familiar with State and Federal laws governing the control of mineral recovery and the environment, as well as the Federal or State agencies responsible for the enforcement of such laws.

(4) Division and District Engineers are requested to use the Refuse Act of 1899 and any other legal remedies that may be appropriate in a particular situation in order to protect the interests of the United States and preserve the integrity of the project.

### § 644.6 Feasibility Reports and Design Memoranda.

(a) *Feasibility investigations and reports*. Survey investigations and reports are the studies and reports, specifically authorized by Congress and made by Division and District Engineers as assigned by the Chief of Engineers, to determine the scope, justification, and degree of Federal interest in protection and development of harbors, waterways, shores and beaches, and river basins. For water resource projects the reports include determination of needs of alternative plans of protection and development to be considered for recommendation to Congress for authorization as Federal projects. Survey reports should clearly specify real estate requirements, both immediate and prospective, and the responsibilities of Federal and non-Federal agencies relative thereto. The real estate estimates in the reports should be recent enough to be meaningful for the purpose intended. Documentation regarding the estimates, such as when and by whom made, nature and extent of field investigation, search for comparable sales and similar factual material, shall be maintained.

(b) *Phase I and Phase II General Design Memoranda*. (1) The General Design Memorandum (GDM) is a report on an authorized project. Its form and content are set forth in ER 1110–2–1150. It includes a real estate section, which consists of a general discussion of real estate requirements for the project, recommendations as to estates to be acquired, a gross appraisal of the necessary land and interests therein, and other features considered desirable to present all major real estate problems and to recommend solutions. Subject to the availability of data, minerals in the project area should be covered in the manner set forth in § 644.5. Detailed sales data are not necessary, but may be included if it is anticipated that recommendations will be made for early acquisition of interior tracts.

(2) Real Estate personnel will prepare the real estate section of the GDM. The requirements for current real estate estimates and necessary documentation thereof contained in § 644.6(a) are also applicable to this paragraph.

(c) *Real Estate Design Memoranda*. (1) Following approval of the Phase I GDM, a Real Estate Design Memorandum (REDM) will be prepared by the Division or District Engineer. Approval of the REDM shall be in accordance with ER 1110–2–1150, para 21b(2)(j). No land shall be acquired for the project without approval of the initial REDM except (i) in the case of an advance land acquisition situation, (ii) acquisition for local cooperation project, or (iii) when a letter-type REDM has been submitted. The REDM will include the following in the order set forth below:

(A) A statement that this REDM is tentative in nature for planning purposes only and that both the final real property acquisition lines and the estimate of value are subject to change even after approval of this REDM.

(B) Project authorization, designation, location and date of approval of GDM Phase I, including the Recreation Resources Appendix (App A, ER 1110–2–1150).

(C) General description of the area and estimated total acreage. The total acreage will be broken down as to fee and easement areas. The fee will be further broken down to indicate, separately, the estimated acreage required for the various authorized project purposes.

(D) If any Government-owned land is within the area, indicate the Government's estate, degree of interest required for project purposes, and views of the local representative of the controlling agency as to use for project purposes (see Act of July 26, 1956 (70 Stat. 656) with respect to national forest land).

(E) Appraisal information containing a general statement as to character, present use and highest and best use of the land, local economic conditions which may affect the trend of real estate values in the community and the gross estimate of value for the area to be acquired under the REDM. The gross appraisal on which this estimate is based should be forwarded concurrently to HQDA (DAEN-REE) WASH DC 20314.

(F) Information necessary to ascertain responsibility under Pub. L. 91–646 including but not limited to the following:

(*1*) The number of persons, farms and businesses to be displaced.

(*2*) An estimate of all costs, including contingencies to be incurred as a result of compliance with Pub. L. 91–646. Part 641 of this subchapter sets out the items to be considered in estimating these costs.

(*3*) Information regarding the availability of replacement housing.

(G) Estimated cost to the United States of lands, easements, and rights-of-way necessary for acquisition by the United States for:

(*1*) Access roads to project area. A statement will be included as to whether existing public roads will be utilized within the purview of 33 U.S.C. 701r–1 or new rights-of-way for access roads will be acquired, with the estimated cost of such new rights-of-way. The proposed plan of access during construction will be fully described.

(*2*) Relocation of highways, roads, railroads, pipelines, and utilities (ER 1180–1–1, Section 73). Statement will be included as to whether the Government or the owner(s) will acquire new rights-of-way, if any, necessary for the various relocations.

(H) Number of structures and facilities which will come within the purview of section 111 of the Act of Congress approved July 3, 1958 (Pub. L. 85–500), and a preliminary estimate of Government costs (ER 1180–1–1, Section 73).

(I) A study, in accordance with § 644.5, of present or anticipated mineral activity in the vicinity of the project which may affect the operation thereof. A recommendation including cost estimate, if applicable, regarding the acquisition of the minerals should also be included in this section of the REDM.

(J) A discussion of standing timber and other vegetative cover in proposed recreation areas and other areas above the conservation pool which have recreation or scenic value. Recommendations should be made as to the significance of such timber and cover and as to whether reservation of standing timber should be permitted in the various parts of the fee area.

(K) A map(s) showing the area which is the subject of the REDM, indicating the acquisition guide line, contour line, the tentative blocked out fee line, multipurpose pool, and lands in which the acquisition of easements is recommended. The map(s) will show, where appropriate, the dam site, construction area, borrow areas, spoil areas, public access areas, fish and wildlife areas, and recreation areas. In addition, the appropriate map(s) will have outlined thereon the items of construction or major project features. Access roads and railroad rights-of-way required for these areas will also be shown. Chapter 3 of ER 405–1–12 relates to the preparation of maps. With respect to a project where it is planned to submit several REDMs covering portions of the project, the initial REDM will contain a map showing the entire project, with the information shown thereon as indicated above, insofar as this information covering the entire

project is then available. All subsequent REDMs will contain the same type of map, on which will be shown the area(s) on which REDMs have been previously submitted with each such area keyed to the number of its REDM. Maps shall be of sufficient scale to be legible and to permit ready interpretation of pertinent features.

(L) An aerial mosaic, if available, to provide a pictorial support to the rest of the report concerning involved problems.

(M) Discussion relating to the acquisition or relocation of towns and cemeteries within the project area (ER 1180–1–1, Section 73).

(N) A realistic estimate of administrative costs, giving due recognition to existing and foreseeable conditions. To assure direct relationship between costs and estimates, the breakdown of these estimates will conform to the prescribed acquisition activity cost items as set forth under Real Estate Schedule/Cost and Performance, ENG Form 4564, or any further breakdown which the District Engineer may consider desirable. Included as a minimum requirement will be: Estimated administrative costs for mapping, surveying, and boundary monumentation, appraising, title evidence, negotiating and closing direct purchases, condemnation, and relocation assistance.

(O) Summary of project real estate costs, total all project real estate costs by category, *i.e.*, land cost, improvements, severance, Pub. L. 91–646 costs, relocations, minerals, contingencies, administrative costs, etc.

(P) Schedule of acquisition.

(Q) Discussion and recommendations concerning the nonstandard estates proposed for acquisition and the real property boundary lines.

(R) The extent of the existing navigational servitude (ER 1165–2–302).

(S) The REDMs will be assigned a single basic number for each project; succeeding REDMs will be given alphabetical suffixes to the basic assigned number—for example, REDM Nos. 5, 5A, 5B, etc. Copies of the letter of transmittal and indorsements thereon will be inserted in the front of each copy of the REDM. A cover sheet will list chronologically all REDMs (including supplements thereto and brief letter-type memoranda) previously submitted, and will show dates submitted by the District Engineer and, if approved, dates of approval thereof.

(2) Upon approval of each REDM, the Division or District Engineer may, subject to the availability of funds, proceed with the acquisition of land and/or interests therein. The REDM, as approved, will constitute the overall real estate plan for acquisition of the area covered by the REDM. Whenever changes in the approved REDM are required, a supplementary REDM describing the proposed changes and setting forth the reasons therefor will be submitted. Approval of a supplemental REDM is required before acquisition can proceed in the area in which the changes are proposed.

(3) Prior to the approval of the REDM, Division and District Engineers should, subject to the availability of funds, proceed with preliminary real estate work, in the same manner as set out in § 644.30. No action will be taken to solicit an offer from a landowner for the purchase of his land until the acquisition has been approved and subject to availability of funds and compliance with the applicable provisions of Pub. L. 91–646.

(4) An REDM is not required for projects authorized by the Congress subject to the condition that local interests furnish without cost to the United States the necessary lands, easements, and rights-of-way. However, the GDM should include a statement enumerating the requirements of local cooperation, the name of the local interests proposing to fulfill said requirements, an estimate of land costs, and any other information pertinent thereto.

(5) Number and content of Real Estate Design Memorandum.

(i) With respect to reservoir projects involving an extensive real estate program, it is considered preferable that more than one REDM be prepared so that each will cover a segment or group of segments, making up the total project, consistent with the planned schedule of acquisition.

(ii) For those projects, requiring two or more REDMs to cover the project area, each REDM will include all contiguous lands for each public access

point and recreational site proposed within the area covered by that REDM. Noncontiguous areas planned for these purposes that are located beyond the limits of the REDM involved will be omitted therefrom. This procedure does not apply to areas authorized for fish and wildlife purposes. Lands authorized specifically for fish and wildlife purposes may be included either in a conventional REDM, along with other project lands or be submitted as a separate REDM, depending on convenience in preparation and size of the area. However, in either event, whenever practicable, the entire area proposed for this purpose should be covered in one REDM, as a unit.

(iii) For smaller projects, not involving an extensive real estate program, all real estate requirements, including those for public access, fish and wildlife, and recreation, may be covered in a single REDM.

(d) *Blocking out.* The following are guidelines to be observed to the extent possible in preparing the REDM. These guidelines will be adhered to by the Division Engineer in his approval of the final real estate acquisition lines.

(1) Close blocking out will be accomplished in accordance with sound real estate practices.

(2) For land acquired in fee, the blocked out final real estate acquisition line will be established in such manner as to minimize costs and cause the least disruption in the use of the remainder of the ownership.

(3) Severance damages will be avoided to the extent possible consistent with real estate requirements for the project. In accordance with section 301 of Pub. L. 91–646, if the acquisition of part of a tract will render the remainder an uneconomic unit, an offer must be made to purchase the entire tract.

(4) It is conceivable that, in certain instances, acquisition of an easement will result in an uneconomic remainder and this requires application of section 301 of Pub. L. 91–646, as in paragraph (d)(3) of this section.

(5) A remnant without access need not be acquired if:

(i) The owner desires to retain the property and releases the Government from damages for lack of access, and

(ii) The obtaining of such release in lieu of acquisition is concurred in, in writing, by the local road authority, and the local road authority is released from damages due to loss of access.

(6) For lands to be acquired in fee or easements, close tangent will be used, generally following the acquisition line.

(7) When small portions of additional properties, not otherwise needed for the project, are within the acquisition line, they may be omitted if to do so will not materially affect the operation and maintenance of the project as determined by operational elements.

### § 644.7 Acquisition lines.

(a) *Tentative acquisition lines.* As indicated in § 644.6(c)(1)(iii)(K), tentative acquisition lines are shown on maps which are part of the REDM. However, at that time, the lines will, to some extent, be irregular and located without full regard to their effect upon fringe tracts. It will, therefore, be necessary to establish final acquisition lines, in accordance with sound real estate practices. Accordingly, fringe tracts will not be acquired until the final acquisition lines are approved by the Division Engineer.

(b) *Submission.* As soon as possible after authority has been granted to acquire the land and/or interest therein, the District Engineer will complete appraisals covering the fringe tracts. Thereupon, a map showing proposed final acquistion lines will be submitted to the Division Engineer, accompanied by justification and reasons therefor. This submission may be for an entire project or by segments or units. However, if the final map is submitted on a segment or unit basis, each segment or unit must be complete in itself and not be dependent on another segment or unit not submitted for approval.

(c) *Approval.* The Division Engineer is authorized to approve final acquisition lines, but shall not delegate this responsibility to District Engineers. This authority is subject to the following:

(1) Except for the addition or deletion of individial ownerships, or portions thereof, on the basis of the criteria contained in § 644.6(d), approval of any changes in the overall plan will be in compliance with ER 1110–2–1150.

(2) Estates in individual tracts may be changed if consistent with the overall plan. Approval, however, will be required from HQDA (DAEN-REA-P) if the estates are non-standard.

### § 644.8 Planning and scheduling real estate activities.

(a) *Normal scheduling.* (1) The objective of a planned program is to provide for the early acquistion of land to avoid enhancement in land prices and a minimum of inconvenience to the property owners. Also, it is essential that there be adequate planning of the land acquisition program to insure that there is no interference with unacquired properties as a result of construction activities.

(2) It is essential that adequate funds be programmed on ENG Form 2213, Advance Engineering and Design Planning Schedule (PB-2B), to proceed with real estate planning; preparation of Real Estate Design Memoranda; determination of final project boundaries; and preliminary real estate work to the point where land acquisition can be started as soon as construction funds become available.

(3) Surveys and boundary monumentation and/or marking shall be completed prior to acquistion.

(4) Funds will be programmed for acquisition of lands for the construction area and/or other areas initially required within the first year, and for acquisition of lands for the other features of the project as rapidly as necessary real estate data can be assembled. For projects with major impoundment features and with scheduled construction periods of more than two years, funds will be programmed at a uniform level so that total real estate requirements will be covered by accepted offers to sell or declarations of taking filed in court by the end of two-thirds of the overall construction period.

(b) *Public information.* (1) The real estate activities of the Corps are extremely sensitive, since they disrupt the lives of individuals and take their homes, farms and businesses. Therefore, the importance of keeping landowners and others having an interest in the land informed of the land acquisition program is emphasized. In order to avoid false rumors and to permit the affected owners to formulate plans for the future, information concerning the land acquisition program, procedures with respect thereto, and the specific effect on the individual properties, will be furnished to the affected owners at the outset of the project.

(2) Section 302 of Pub. L. 86–645 (33 U.S.C. 597) is quoted, in part, for guidance:

> Within six months after the date that Congress authorizes construction of a water resource development project under the jurisdiction of the Secretary of the Army, the Corps of Engineers shall make reasonable effort to advise owners and occupants in and adjacent to the project area as to the probable timing for the acquisition of lands for the project and for incidental rights-of-way, relocations, and any other requirements affecting owners and occupants. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, the Corps of Engineers shall conduct public meetings at locations convenient to owners and tenants to be displaced by the project in order to advise them of the proposed plans for acquisition and to afford them an opportunity to comment. To carry out the provisions of this section, the Chief of Engineers shall issue regulations to provide, among other things, dissemination of the following information to those affected: (1) Factors considered in making the appraisals; (2) desire to purchase property without going to court; (3) legal right to submit to condemnation proceedings; (4) Payments for moving expenses or other losses not covered by appraised market value; (5) occupancy during construction; (6) removal of improvements; (7) payments required from occupants of Government-acquired land; (8) withdrawals by owners of deposits made in court by Government; and (9) use of land by owner when easement is acquired.

(3) Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, Division and District Engineers will conduct meetings with landowners. The United States Senators of the state or states and Members of the House of Representatives of the district or districts in which the project is located should be invited to attend. Normally, the public meetings should be scheduled prior to the commencement of the land acquisition program. The agenda for the meetings will include not only the nine specific items listed in section 302, Pub. L. 86–645, but all other items of a nature

that will assist landowners and tenants in understanding all of the Corps' real estate procedures such as, but not limited to: Acquisition schedules, the type of land interests to be acquired under the Joint Policy, approximate acquisition lines, management of the project, etc. In addition to the foregoing, pamphlets containing this information and the information brochure explaining the benefits to landowners under Pub. L. 91–646 will be given wide distribution at approximately the same time the landowners meeting program is initiated, and copies will be furnished to the appropriate United States Senators and Members of the House of Representatives.

(4) Inquiries, comments of landowners and tenants, and problems developed at the landowners meetings should be recorded or, at least, a detailed written resume made. HQDA (DAEN-REA-P) should be informed as to the outcome of these meetings. Effective follow-up to supply any information not available at the meeting, or to consider any particular problems presented, is essential to realize the full advantage of the public relations program.

(5) The provisions of this paragraph are applicable to all water resource development projects, including all local cooperation projects for which real estate is to be acquired in whole or in part by local interests. Initial information as to such projects for which real estate acquisition is exclusively a local interest responsibility may be given, within six months after project authorization, by either the local interest or Federal Government, through the media best adaptable under the circumstances. Advice should be given as to the timing of acquisition of the lands and lesser interests, and also as to the extent to which acquisition will be accomplished by the local interests. After appropriations, the local interests should be encouraged to sponsor and conduct a landowners meeting with attendance by Corps of Engineers representatives. If there is a joint responsibility for real estate acquisition, the local interests should explain the scheduled requirement for possession of the lands involved and their acquisition procedures, and the Corps of Engineers representatives should explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests, and the authority for each action.

(6) If local interests refuse to call a landowners meeting, the District Engineer should call such a meeting, to explain the general construction features of the project, to inform the landowners and tenants that local interests are obligated to acquire the necessary lands, to state that we cannot explain the exact procedures which will be followed by local interests, but to explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests. If only a very few landowners and tenants are involved, local interests may hold their meeting in the District Engineer's office or at a location more convenient to the landowners and tenants. While this would not be a formal meeting, the same type of information would be furnished. Here, also the District Engineer should call such a meeting if local interests refuse to do so.

(7) To summarize, public (landowners) meetings are required by section 302 of Pub. L. 86–645. This requirement applies to local cooperation projects as well as to the large Federal water resources development projects. The meetings will be held by Division/District Engineers, to comply with the law, if local interests refuse to call meetings at which information would normally be furnished jointly by the local interests and by the Corps of Engineers representatives.

(8) Real Estate personnel and the Public Affairs Officers of the Division and District Engineers should cooperate closely in planning vigorous public relations programs as contemplated in this paragraph and through the press, radio, and television.

(c) *Land acquisition funds for land acquisition in advance of project construction.* (1) A Land Acquisition Fund in the amount of $2 million was established as a part of the appropriations contained in the Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971 (Pub. L. 91–439). Comments of the House Appropriations Committee in establishing

the Fund are contained in House Committee Report No. 91–1219, 91st Congress, 1st Session, as follows:

> New land acquisition fund. The committee has approved the budget proposal to allocate $2 million to establish a fund for land acquisition, in advance of project construction, to alleviate severe hardship cases and to avoid price escalation. The proposal has been approved with the understanding that prior committee approval will be obtained for initial purchases in each project area and that use of the fund shall be confined to those projects on which planning has progressed to the point that the damsite has been finalized, and it is known with certainty the lands to be acquired for the project.

This fund was increased to $3 million by the Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act of 1973 (Pub. L. 92–405).

(2) *Applicability.* Expenditures from the Fund are applicable to *authorized* water resource development projects for which land acquisition is a Federal responsibility.

(3) *Guidelines for utilization of the Fund for Advance Land Acquisitions.* (i) The Fund will be used to acquire private and non-Federal publicly-owned properties at authorized water resource development projects on which planning has progressed to the point that the damsite has been finalized and it is established with certainty that the individual properties will be required for the project.

(ii) Only those individual properties will be considered for acquisition where it can be shown that advance acquisition of the properties will alleviate severe hardship to the landowner and/or will avoid unusual land price escalation. Unusual price escalation cases involve those individually owned properties where it can be demonstrated that the land value will materially escalate, prior to commencement of the land acquisition program for the project from future appropriations for land acquisition or construction, because of imminent actions which will change the highest and best use of land, such as zoning actions, planned construction on the land and other changes in real estate market factors which will materially escalate land values. Normal land escalation occurring to all properties in general within a project will not be considered as a basis for acquisition. Hardship cases include, but are not necessarily limited to, cases involving the following:

(A) The landowner has a valid contract to purchase a replacement property and failure to dispose of his property inside the project will force him to default the contract, forfeit his deposit, or otherwise lose the benefits of the contract, and other replacement property is not available within the same area under similar terms;

(B) The property owner is forced to relocate from the area due to his employment or other circumstances beyond his control, and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult; and

(C) Illness of the owner or other members of his family, or other personal hardship makes his relocation from the area necessary and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult.

(D) As indicated above, these examples are not intended to exclude other cases where, in the exercise of sound judgment, actual hardship is found to exist.

(iii) Individual tract ownerships recommended for advance acquisition by Division and District Engineers and approved by OCE will be acquired by direct purchase or through the filing of condemnation proceedings, in accordance with normal procedures.

(4) *Procedures.* Individual tract ownerships which Division and District Engineers consider are hardship cases or involve unusual price escalation, within the guidelines set forth in paragraph (c)(3) of this section should be recommended to OCE for acquisition.

(i) Full justification must be submitted to HQDA (DAEN-CWB) WASH DC 20314 in support of the recommendation to acquire the individual ownerships.

(ii) If the recommendation is approved, action will be taken by OCE to

obtain approval of the House and Senate Committees on Appropriations. Upon receipt of Committee approvals, the Division Engineer will be authorized to proceed with the acquisition action if sufficient funds are available from the Land Acquisition Fund.

(iii) Appropriate records will be maintained by District or Division Engineers of allocations made from the Fund which are used for approved acquisition cases. These funds will be accounted for under a designated account number.

(iv) When appropriations for land acquisition or construction of the Federal project are specifically made by the Congress, the initial allowance of funds to the project will be reduced by the amount previously allotted from the Land Acquisition Fund in order to replenish the Fund for use at other projects.

(d) *Acquisition for State or local interests—Resettlement sites.* (1) Section 209 of Pub. L. 90–483 (82 Stat. 745) enacted August 13, 1968, provides that the Secretary of the Army may, prior to the approval of title by the Attorney General, acquire, enter upon, and take possession of lands or interests in lands by purchase, donation, condemnation or otherwise, whenever any State, or any agency or instrumentality of a State or local Government, or any nonprofit incorporated body organized or chartered under the law of the State, or any nonprofit association, shall undertake to secure any lands or interests therein as a site for the resettlement of families, individuals, and business concerns displaced by a river and harbor improvement, flood control or other duly authorized water resource project, and

(i) It is determined by the Secretary of the Army that the State or local interest is unable to acquire the necessary land, or unable to acquire it with sufficient promptness, and

(ii) The Governor of the State in which the site is located has requested such acquisition.

(2) *Cost of acquisition.* The Act also provides that:

(i) All expenses of acquisition accomplished under the authority of the Act, including any award that may be made in a condemnation proceeding, the cost of title evidence, appraisals and any other costs incident to such acquisition, shall be paid by the State, agency, instrumentality or nonprofit body.

(ii) The State, agency, instrumentality or nonprofit body may repay such amount from any funds made available to it by any Federal department, agency, or instrumentality, other than the Department of the Army.

(iii) Pending such payment, the Secretary of the Army may expend from any funds appropriated for the project such sums as may be necessary to carry out section 209, Pub. L. 90–483.

(iv) To secure such payment, the State, agency, instrumentality or nonprofit body may be required to execute a proper bond before acquisition is commenced.

(v) Any sums paid by a State, agency, instrumentality or nonprofit body under section 209 shall be credited to the appropriation for the project.

(3) *Determinations required before application of section 209.* No acquisition by the Department of the Army may be undertaken under this section until the Secretary of the Army has determined, after consultation with appropriate Federal, State and local government agencies, that:

(i) The development of a site is necessary in order to alleviate hardships to displaced persons;

(ii) The location of the site is suitable for development in relation to present or potential sources of employment; and

(iii) A plan for development of the site has been approved by appropriate local government authorities in the area or community in which the site is located.

(4) *Action by District or Division Engineer.* When the District Engineer is of the opinion that section 209 may be applicable to a given situation, after consultation with State and State agency officials, the Governor of the State should be advised of the pertinent provisions of the law and the assistance that can be rendered by the Secretary of the Army under the terms and conditions of the law at the request of the Governor. If planning towards resettlement is undertaken by a State, agency, instrumentality or nonprofit body, the District Engineer will keep advised of

the progress of such local planning and will furnish guidelines and consultation to the local interests during development of the plan.

(5) *Implementation of the Plan of Resettlement.* When the final plan has been developed and approved by the appropriate Federal, State and local governmental agencies (which will include information showing that the site is necessary to alleviate hardships to displaced persons and suitable for development in relation to present or potential sources of employment), a showing has been made that the State is unable to acquire the necessary lands or interests therein or is unable to acquire the lands with sufficient promptness, the Governor has executed a request that the Secretary of the Army acquire the lands under the terms and conditions of the Act, and the State or agency of the State has executed a proper bond in an amount deemed necessary to cover total expenditures to be made by the Army for the land acquisition, the District Engineer should submit to HQDA (DAEN-REA-P) WASH DC 20314 a brief Real Estate Design Memorandum covering the land to be acquired under the plan. The REDM should be accompanied by the final approved plan and the information listed above in order that the Secretary may make the determinations as required by section 209(b) of Pub. L. 90–483. No action will be taken by the District Engineer to acquire the land, proposed for acquisition in the plan and the REDM, until receipt of authority from DAEN-REA-P to proceed with the acquisition. A complete record will be maintained of all land and administrative costs incident to the acquisition as a basis for a request for reimbursement to the State and/or the State agency or agencies. Upon authorization to the District Engineer to proceed with land acquisitions of the site, normal Corps land acquisitions procedures will be followed.

(6) *Conveyance of the site to the State or State agency or agencies.* In accordance with section 209(c) of Pub. L. 90–483, upon completion of the acquisition of the site, a proper deed will be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for execution by the Secretary of the Army, for conveyance of the land to the State or State agency, as appropriate. Evidence must be submitted that the terms and conditions of the deed have the approval of the Governor and the agency to which conveyance is to be made. The deed will not be delivered until reimbursement has been made to the United States for the land and administrative costs expended by the District Engineer incident to the acquisition of the site.

MILITARY (ARMY AND AIR FORCE) AND OTHER FEDERAL AGENCIES

### § 644.21 General.

(a) *Purpose.* Sections 644.21 through 644.30 describe the procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for military projects, for the Department of Energy (DOE), and for other Federal agencies as required.

(b) *Applicability.* Provisions of these sections are applicable to the Office of the Chief of Engineers and all Division and District Engineers having real estate responsibilities.

(c) *General procedures.* (1) AR 405–10 and AFR 87–1 outline the policies of the Department of the Army and the Department of the Air Force, respectively, with respect to real estate acquisitions.

(2) The policies of the Department of Energy (DOE) with respect to acquisition of real estate are generally set forth in requests of that agency for preparation of real estate design memorandums.

(3) The purpose of the planning function is to establish a sound basis for the acquisition of land and interests therein in accordance with existing law and broad procedures of higher authority; to collect all necessary real estate data; to correlate and evaluate these data from the standpoint of establishing the necessity for the proposed acquisition; to establish that no Government-owned or Government-controlled lands are available for the intended use; to determine the required estate, in accordance with existing policies, sufficient to protect the interests of the Government; and in general, to prepare each project for submission

to the head of the interested department or agency, or his designee, and, where necessary, to the Department of Defense and the Committees on Armed Services of the Senate and House of Representatives, for approval.

(4) In the preparation of Real Estate Planning Reports, or Real Estate Summaries, consideration will be given to the procedures and criteria expressed in the regulations cited herein.

### § 644.22 Site selection.

When a requirement develops for a new installation or the extension of an existing installation, site selection will be the primary responsibility of the using service. A representative of the appropriate Division or District Engineer will participate in selection of sites for the Department of the Army and, upon request, in Department of the Air Force site selection and preliminary investigations. Commanders and site boards should be informed of any available lands, including marginal lands in civil works projects and available lands under the control of other departments and agencies, suitable for the desired purpose. The using service will request the Chief of Engineers or the appropriate Division or District Engineer to prepare a Real Estate Planning Report or Real Estate Summary, making reference to the prior Site Selection Report if one was prepared.

### § 644.23 Real Estate Planning Documents.

(a) *Real Estate Planning Reports.* (1) A Real Estate Planning Report (REPR), as shown in Figure 2–1 in ER 405–1–12, will be prepared by the Division or District Engineer for all major fee and easement projects other than Reserve Component projects and extinguishment of grazing privileges on Federal lands. The request for such REPR may be initiated by any command or echelon of the Army or Air Force (or by the Washington Headquarters or field operations offices of DOE for a Real Estate Design Memorandum). Certain items contained in Figure 2–1 (ER 405–1–12) relate only to Department of the Air Force land acquisition programs for runways and approach zones and are not applicable to other projects. Such items will be omitted from REPRs where not applicable. When forwarding the REPR, a copy of the Reviewing Appraiser Comment, concerning the estimated land values assigned therein, should be included as an inclosure to the transmittal letter.

(2) On Department of the Air Force projects where estimated cost is not in excess of $25,000, brief REPRs are to be prepared for issuance of directives by the approprate Air Force Regional Civil Engineer (AFRCE). Such reports need not be submitted to the Chief of Engineers except in those cases in which the major command submits a copy to Headquarters, USAF. This report should contain adequate information on the items listed in the following outline but need not be limited thereto:

(i) Requirement for the property.

(ii) Cost estimate of the property with indication of the method used in arriving at the estimate.

(iii) Summary sheet showing the acreages, interests to be acquired, improvements and estimated costs, including the administrative costs of acquiring the real property and all costs in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646).

(iv) Map showing property to be acquired, ownerships, and relation to existing installation, where appropriate.

(v) In reports covering the acquisition of runway clearance easements, a profile, topographic, and obstruction drawing should be furnished.

(vi) Discussions of any peculiar or unusual problems anticipated in connection with the proposed acquisition including relocation assistance required by Pub. L. 91–646.

(vii) Recommendations of the office preparing the report.

(b) *Planning Documents for Reserve Component Acquisitions.* Figure 2–2 in ER 405–1–12 is a sample of an REPR for use in acquisition of land for the U.S. Army Reserve Program. This report omits some items which appear in the usual planning report but includes other items particularly applicable to U.S. Army Reserve sites.

(1) *Real Estate Planning Report.* The REPR for Reserve Component acquisitions should contain the following:

(i) A list of all sites inspected with reasons for rejection of the other sites.

(ii) Description of physical characteristics of the site.

(iii) Type and extent of grading and drainage required.

(iv) Soil and foundation conditions with classification of overburden materials (to be determined by test borings only if conditions indicate this necessity).

(v) Availability of adequate access, water supply, electricity, gas for space heating, sewage disposal, drainage conditions, and telephone services. Where it is necessary to construct or extend streets, water, sewer, or other utility facilities to serve the selected site, a written commitment will be obtained from the municipal authorities assuring the United States that the municipality will perform such work without cost to the United States, or indicating the proportionate share of the costs the municipality will bear. This commitment will be made a part of the REPR.

(vi) Cost estimates of supporting facilities and any unusual building foundations, itemized to the degree practicable to indicate items, quantities, sizes, unit prices and totals.

(vii) A preliminary site plan, showing existing conditions and proposed layout, to insure adequacy of the site for its intended ultimate use.

(viii) A formal legal commitment in the form of a resolution or other instrument authorizing a long-term, nominal-rental lease or a donation, together with a reference to the authority to grant the lease or make the donation, in instances where land is owned by a State, county, city or other political subdivision.

(ix) A draft of the proposed lease in terms acceptable to the lessor, taking into consideration the requirements in DOD Directive 4165.16.

(2) *Agreements for Joint National Guard-Army Reserve Center.* Title 10, U.S.C., 2231 through 2238, DOD Directives 1225.2 and 1225.5, and AR 140–478 contain policy and directions for the establishment of this type of training facility. The Division or District Engineer will participate in negotiation of the joint-use agreement and preparation of the necessary instruments, in coordination with local Army Reserve and National Guard representatives. A copy of the agreement so negotiated will be attached to each copy of the REPR prior to its distribution for review. DOD Directive 1225.2 provides in part: ''The agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility.'' This provision has generally been interpreted as fixing the use term at 25 years, although the probably useful life of a well-maintained armory type structure is much longer. The DOD provision states a minimum requirement; however, it does not preclude the Army from securing a longer period of use. In order to secure a use term more commensurate with the Government investment, joint-use agreements, at a minimum, will be set up on a 25-year basis, with the option on the part of the Government to renew for an additional 25-year period under the same terms and conditions.

(3) *Real Estate Summary.* Considerable time, effort and funds can be saved if REPRs are foregone in those cases involving acquisition of property for U.S. Army Reserve and Army National Guard use by transfer from another military department or the General Services Administration. The Real Estate document in support of such proposed acquisitions will be a Real Estate Summary which will contain the following elements only:

(i) Authority for request.

(ii) Acreage and estate.

(iii) *Estimated* gross fair market value.

(iv) Map.

(v) Excess status of land.

(vi) Description of improvements (including building numbers and square feet).

(vii) Justification for use of the property as provided by the Command. Proposed construction (if any) should be included.

(viii) Engineering Feasibility Study (if construction is planned).

(ix) Draft Acquisition Report is required for clearance under title 10

U.S.C. 2662 if *estimated* gross fair market value is over $50,000 for acquisition by transfer from another military department.

(c) *Lease Planning Reports.* Reference is made to AR 405–10 and AFR 87–1, concerning requests for leasehold acquisitions. A Lease Planning Report will be submitted upon request of the Chief of Engineers or the using service. Figure 2–3 in ER 405–1–12 is a sample of a Lease Planning Report.

(d) *Grazing Land Reports.* (1) When Federal grazing lands are a part of a project and it is proposed to cancel, or to prevent the use of, grazing privileges thereon, under authority contained in the Act of Congress approved July 9, 1942, as amended (43 U.S.C. 315q), the REPR will be utilized with appropriate changes. The report will disclose each of the ranch units comprising grazing privileges, indicating, in tabulated form, the name of each operator, acreage owned in fee, acreage of State-owned land held under lease, acreage of railroad land held under lease, acreage of other privately owned land held under lease, acreage under Federal grazing permits or licenses, total acreage in ranch unit, total carrying capacity of ranch unit, and actual number of stock being carried on each ranch unit; whether project will be classified as a permanent or temporary installation; other acquisition problems, such as mining and water rights or claims, which may be encountered; and a project map indicating project boundaries, Federal and State-owned lands, and location of mining and water rights or claims.

(2) The cost estimate will be prepared in accordance with subpart B.

(e) *Distribution and approval of planning reports*—(1) *Army projects.* Upon completion of a fee and/or easement planning report or a Lease Planning Report, the report will be processed as outlined in AR 405–10. Information will be included in the transmittal letter concerning status of environmental assessment or impact statement.

(2) *Air Force projects.* (i) Upon the completion, review and approval of a fee and/or easement planning report, the District Engineer will forward copies of the planning report to the Division Engineer who will forward the original and one copy with appropriate recommendations to HQDA (DAEN-REA-L) WASH DC 20314. Simultaneously with this action, the Division Engineer will furnish the Major Air Command with six copies of the planning report for review, approval, and subsequent transmittal to Headquarters, USAF.

(ii) After preparation, review and approval, the District Engineer will submit the Lease Planning Report, wherein the estimated annual rental is in excess of $25,000, to the Division Engineer. Upon review and approval, the Division Engineer will forward the original and a copy, with appropriate recommendations, to DAEN-REA-L. Simultaneously with this action, the Division Engineer will furnish the Major Air Command with two copies of the report. The Chief of Engineers will review the report and forward the original to Headquarters, USAF, with appropriate recommendations.

(3) *DOE projects.* Upon completion of a fee and/or easement real estate design memorandum and review and approval by the District Engineer and, in turn, the Division Engineer, a copy of the report will be submitted to the appropriate DOE office for review and approval. When notice of approval is received, the District Engineer will transmit, through the Division Engineer, the original and two copies of the REDM, with recommendations, and evidence of approval by the DOE field office, to HQDA (DAEN-REA-P) WASH DC 20314. Upon review and approval, the Chief of Engineers will transmit the original and one copy of the REDM to Headquarters, DOE, for approval and further action.

### § 644.24 Acquisition by Transfer from other Government Departments or Agencies (except Public Domain).

When a requirement develops for the acquisition of Government-owned real property and an appropriate request is received for the acquisition, the District Engineer will prepare and submit, through the Division Engineer, to HQDA (DAEN-REA-L) WASH DC 20314 a Real Estate Planning Report (Figure 2–1 in ER 405–1–12) (or a brief report, if it is determined this would be sufficient) setting forth the requirements

for the property, the market value thereof, the ''in place'' value of existing improvements, the estimated cost of the proposed construction, attitude of the local representative of the department or agency having control, and such other items as are necessary to give full discussion of the real estate implications, for consideration and the obtaining of a real estate directive for the acquisition by transfer.

### § 644.25 Withdrawal of Public Domain for Defense Purposes.

(a) The Act of Congress approved February 28, 1958 (Pub. L. 85–337, 72 Stat. 27) provides that all withdrawals and reservations of public domain land, water, or land and water, or restrictions on use of areas in the Continental Shelf, aggregating an area of more than 5,000 acres for any one defense project, shall be by Act of Congress. Upon receipt of a request for withdrawal or reservation of lands of the public domain or for restrictions on exploration and exploitation in the Continental Shelf, and in order that the Chief of Engineers may present the project to higher authority for approval and submission to the Congress, if approved, the District Engineer will prepare and submit, through the Division Engineer, to HQDA (DAEN-REA-L) WASH DC 20314 a Real Estate Planning Report, including the following items.

(1) A copy of the request from the Army or the using service.

(2) Complete information relative to the eight items specified in section 3 of Pub. L. 85–337 (43 U.S.C. 156).

(3) If the proposed withdrawal constitutes an expansion of an existing installation, pertinent data relative to the lands constituting the existing installation.

(4) Information relative to outstanding mineral, grazing, water and other rights.

(5) A statement as to the estimated cost:

(i) Of extinguishing such rights; and

(ii) Of suspending the exercise of such rights on a leasehold (annual rental) basis.

(6) Map(s) indicating the exterior boundaries of the project; excepted areas, if any; location of mineral rights, water rights, and other resources discussed in the report.

(b) The District Engineer will also prepare and include a draft of application for withdrawal covering the eight items specified in section 3 of Pub. L. 85–337.

(c) Upon receipt of the REPR and draft of application for withdrawal, the Chief of Engineers will prepare a Real Estate Directive.

(d) The REPR, draft of application for withdrawal, and Real Estate Directive will be transmitted through the Chief of Staff and the appropriate Assistant Secretary of the Army to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for approval of the acquisition and for coordination with the Department of the Interior (Bureau of Land Management). Upon receipt of approval from the ASD (MRA&L), the Chief of Engineers will dispatch the application to the Department of the Interior and will draft the necessary legislation for processing through normal legislative channels.

(e) It has been determined that the words ''in the aggregate'' in section 2 of Pub. L. 85–337 shall be interpreted as applying only to withdrawals of land since enactment of Pub. L. 85–337. For example, if 4,500 acres of public land had been withdrawn prior to enactment of Pub. L. 85–337 and the new application for withdrawal covers 1,000 acres, the requirements of Pub. L. 85–337 do not have to be satisfied. If the new application covering 1,000 acres is honored and the withdrawal completed and a later requirement for 4,500 acres of public lands developed, the requirements of Pub. L. 85–337 would have to be satisfied.

(f) Pub. L. 85–337 and the above instructions do not relate to the use of public lands under permit.

(g) In Department of Air Force cases, the District Engineer will continue to prepare such REPR's and to furnish such other services as are requested by the Major Air Commands.

(h) When the REPR contains a proposal for the acquisition of minerals, the local office of the Bureau of Land Management, Department of the Interior, will be furnished with a copy of

the Mineral Section of the planning report, which will indicate the number and types of claims, areas involved, and the gross appraisal. Accompanying this Mineral Section will be a request that the Bureau of Land Management place an item in the next available budget for the funds required for the validation of the mineral claims involved. A copy of the Mineral Section, together with a copy of the request to the local office of the Bureau of Land Management, will be forwarded to HQDA (DAEN-REA-L) WASH DC 20314 for coordination with the Director, Bureau of Land Management, Department of the Interior, Washington, DC 20240.

### § 644.26 Required clearances.

(a) As stated in AR 405–10 and AFR 87–1, no real estate or interests therein will be acquired until there is legislative authorization for the acquisition (41 U.S.C. 14) and an appropriation available for the purpose.

(b) AR 405–10 and AFR 87–1 also outline the clearances which must be made within the Departments of the Army and the Air Force, with the Department of Defense, and with the Committees on Armed Services of the Senate and the House of Representatives before acquisition may proceed. The Chief of Engineers is responsible for initiating all clearance actions as to Army acquisitions. The Director of Engineering and Services (AF/PRE) and the Director of Planning, Programming and Analysis (AF/RDXI), as to industrial installations, of Headquarters, USAF, are responsible for initiating all clearance actions as to Air Force acquisitions.

### § 644.27 Authority to issue Real Estate Directives.

Where there is legislative authorization, an appropriation is available, and necessary clearances have been obtained, the formal Real Estate Directive (designating the land to be acquired, the estate to be acquired, and the amount of funds available for the acquisition) will be issued by the head of the interested department or agency, or his designee.

(a) Authority to issue all Department of the Army Real Estate Directives is vested in the Chief of Engineers. The Chief of Engineers has been delegated authority from the Secretary of the Army, and has redelegated to Division and District Engineers authority, to approve:

(1) Acquisition of permits from other Government departments and agencies, excepting the use of space in the National Capital Region.

(2) The making of minor boundary changes in approved projects to avoid severance damages, by including or excluding small tracts of land which will not decrease the usefulness of the project for the purpose for which being acquired.

(b) The delegated authority referred to in paragraph (a) of this section was redelegated to Division and District Engineers, provided it can be accomplished without the allotment of additional funds: *And provided,* That there is an existing Real Estate Directive. When there is a change in scope (area and/or funds), recommendation will be made to the Chief of Engineers for amendment of the directive.

(c) The Chief of Engineers has been delegated authority to approve for the Secretary of the Army leasehold acquisitions, including renewals and extensions, and space assignments from the General Services Administration, where the estimated annual rental for any single project is not in excess of $50,000 and the acquisition is not controversial, unusual, or inconsistent with Department of the Army policies, excepting the acquisition by lease of industrial and commercial facilities; projects requiring a certificate of necessity in accordance with the Act of Congress approved June 30, 1932, as amended (40 U.S.C. 278a); and space in the National Capital Region. This authority has been redelegated to the Division Engineer where the annual rental does not exceed $25,000.

(d) Authority to issue all Department of the Air Force Real Estate Directives is vested in the Real Property Division, Directorate of Engineering and Services, HQ, USAF. Major Air Commands and Air Force Regional Civil Engineers may issue Real Estate Directives for acquisitions not exceeding $50,000 in cost.

(1) Division Engineers will assign numbers to Real Estate Directives

issued by Air Force Regional Civil Engineers. The numbers will be in a consecutive series for each Division and will be preceded by a symbol identifying the Division to which the directive is issued.

(2) All revisions to Real Estate Directives will be designated as amendments to the basic Real Estate Directive and will be appropriately numbered.

(3) Division Engineers will forward the original and one copy of each Directive, and each amendment thereto to HQDA (DAEN-REA-L) WASH DC 20314.

(4) Commanders of Major Air Commands will approve requests for leases, lease renewals, and space assignments from the General Services Administration, where the estimated cost of the project does not exceed $50,000 per annum, and subject to any necessary clearances, excepting, however, the leasehold acquisitions listed in AFR 87–1.

(e) Authority to issue DOE Real Estate Directives has been delegated by the General Manager to the Directors of Operating Divisions, DOE.

### § 644.28 Responsibility for acquisition.

HQDA (DAEN-REA-L) is responsible for acquiring real estate for the Departments of the Army (military) and Air Force. HQDA (DAEN-REA-P) is responsible for acquiring real estate for the Department of the Army (civil works), DOE, and other Federal agencies as required.

### § 644.29 Authority to proceed with acquisition.

(a) Upon receipt of the formal Real Estate Directive by the Chief of Engineers, with necessary clearances made and an allotment of funds to the District Engineer, the Division Engineer will be authorized to proceed with acquisition in accordance with the directive and the procedures outlined in subpart C and Pub. L. 91–646 instructions. Where authority has been delegated, the Division or District Engineer may proceed with the acquisition upon receipt of proper directive, any necessary clearances, and allotment of funds.

(b) Under no circumstances will offers be made to landowners or construction initiated prior to the issuance of instructions from the Chief of Engineers to proceed with the acquisition.

(c) The Division or District Engineer will maintain liaison with the local commander and advise him when possession of the land is available.

### § 644.30 Preliminary real estate work.

(a) Preliminary real estate work is defined as that action taken with regard to the individual ownerships leading up to, but not including, solicitation of offers from landowners. It includes preparation or procurement of tract ownership data (ENG Form 900—Tract Ownership Data, where its use is considered desirable), legal descriptions and mapping, title evidence, and individual tract appraisals. At this stage of the acquisition program, it will be necessary to make some contact with landowners, tenants, or other interested persons; for example, the appraiser's discussion of the property with the owner, his agent, or other representative (Pub. L. 91–646, sec. 301(2)). In any such contacts, information should be confined to the fact that acquisition of the real property is being considered; no acquisition action can be taken until funds are made available; and, after acquisition is approved, as much advance notice as possible will be given to all interested parties. Supply of ENG Form 900 may be requisitioned from the OCE Publications Depot in the prescribed manner.

(b) Preliminary real estate work on Army projects will be conducted as soon as design has progressed to the point at which the exact land needed has been firmly determined, or as soon as the District Engineer has determined that it is practicable to proceed.

(c) Preliminary real estate work on Air Force projects will be conducted upon request of Headquarters, USAF, or Major Air Command installations, and at the request of any of those persons designated for industrial acquisitions.

## Subpart B—Appraisal

### § 644.41 General.

(a) *Purpose.* (1) Subpart B describes the general procedures and standards

governing all appraisal work undertaken in connection with the real estate responsibilities of the Corps of Engineers.

(2) These guidelines are to promote and encourage the utilization of uniform appraisal methods, standards, and techniques. Their use should result in the most effective solutions to the many appraisal problems with which the Corps of Engineers is confronted in the implementation of its real estate programs involving acquisition, disposal, and management of all kinds of real property. They are to encourage the appraiser to include in his appraisal process sufficient factual data and other supporting information to develop sound, unbiased, and independent market value estimates; promote appraisal reporting techniques that reflect acceptable judicial concepts, intelligent and convincing reasoning; and provide a sound basis for negotiations and valid testimony in court.

(b) *Applicability*. Provisions of this subpart are applicable to the Office of the Chief of Engineers and all field operating agencies having real estate responsibilities.

(c) *Procedures and standards*. (1) In acquiring, disposing, and managing real estate, or any interest therein, it is the practice of the Department of the Army to impartially protect the interests of all concerned.

(2) The fair market value of the pertinent real estate interest in each parcel or tract of real property being acquired, disposed of or managed will be developed by a competent appraiser preparing an adequate appraisal report indicating sound estimates of values of each estate required. The appraisal may be prepared by either a staff employee or by a self-employed contract appraiser; however, each must have demonstrated the ability to exercise good judgment and must have had adequate experience in estimating the market value of the particular type of property involved. The qualifications and selection of staff appraisers will be based on the Civil Service Standards for the GS–1171 Series. A contract appraiser must also meet the experience requirements set forth in the Civil Service Standards.

(3) It is the practice of the Chief of Engineers to engage the services of competent appraisers and consultants to augment staff capabilities in the appraisal of various real estate interests to be acquired, disposed of or managed by the Corps. Preference will be given to local appraisers and consultants, if qualified, and the costs of their services will be paid by the Government. Any appraiser having an interest in the property being appraised or any relationship, family or business, to the owner thereof, will be disqualified from appraising that particular tract.

(4) Normally, only one appraisal per ownership or tract will be obtained. However, in cases involving controversial appraisal problems or precedent setting patterns of value in first priority areas of large projects, more than one appraisal of the same property may be obtained if considered necessary by the Division or District Engineer. If negotiations with the owners have reached an impasse and it appears that the filing of condemnation proceedings will be necessary to acquire the land or interest therein, the joint Corps of Engineers-Department of Justice policy provides that in fee takings, where the value of the property is between $50,000 and $100,000 only one appraisal need be provided to the Department of Justice so long as it is a contract appraisal; two appraisals will be provided for values exceeding $100,000. In the filing of condemnation proceedings for easement takings in excess of $50,000 two appraisals will be required. At least one of the two appraisals must be made by a contract appraiser. More often than not, both will be by contract appraisers.

(5) Each appraisal report will be carefully reviewed and acted upon by a qualified reviewing appraiser.

(6) It is essential that negotiations for any required real estate interests be conducted on the basis of an approved appraisal that reflects current fair market value. Any appraisal report with an effective date of six months or more prior to initiation of negotiations with the landowner or the date of filing of a condemnation action is considered outdated and should be reviewed and brought up to date to reflect current market conditions.

(7) The appraiser may be called upon, in condemnation proceedings or otherwise, to establish the validity and competence of his estimates. He must familiarize himself with basic rules of trial evidence so that his testimony will be admissible and of probative value. Since, as a witness, he must be prepared to offer convincing testimony, his report should contain an analysis of all factual data upon which his estimates are based.

(8) Local representatives of the Department of Justice are available for consultation in matters pertaining to acquisitions and legal principles involved in valuation problems.

(9) Appraised valuations and the supporting appraisal reports, for acquisition or disposal purposes, are privileged information and the appraiser should not divulge his findings and opinions to anyone except authorized officials of the Government. Section 301(3), Pub. L. 91–646, January 2, 1971, dictates that written statement of, and summary of the basis for, the amount of the estimate of just compensation, shall be furnished the property owner. This does not mean that the appraisal report or any part of it should be given to the landowner, but only a summary of the amount and methods of appraisal.

(10) The appraiser is usually the first personal contact the owner has with a representative of the Government. The owner is generally the prime source of information pertaining to the history, condition, management, and operation of the property. It has always been the Corps' practice for the appraiser to contact and consult with the owner of a property prior to and during the inspection of the tract. Section 301(2), Pub. L. 91–646, January 2, 1971, dictates that ''* * * the owner shall be given an opportunity to accompany the appraiser during his inspection of the property.'' Before the appraiser makes his first visit to the property, he must make every effort to contact the owner and invite him or his designated agent or representative to accompany him on his actual field inspection. If personal contact is not possible, a registered letter should be sent to the owner. The appraisal report should reflect when and how the owner or his representative was contacted, whether or not he accompanied the appraiser, and any other pertinent comments.

(d) *Definition of market value.* ''Under established law the criterion for just compensation is the fair market value of the property at the time of the taking. 'Fair market value' is defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value. The cash or on terms reasonably equivalent to cash, requirement is important and numerous courts have noted this factor.'' (Source: ''Uniform Appraisal Standards For Federal Land Acquisitions,'' Interagency Land Acquisition Conference, Washington, DC, 1973.) This definition is considered to be consistent with another definition approved by the American Institute of Real Estate Appraisers which sets out market value ''as the highest price estimated in terms of money which a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used.''

(e) *Use of appraisal procedures.* (1) The appraisal of real estate is the estimation of the fair market value of a specified interest in a particular ownership of property, and the appraisal profession has developed certain basic appraisal techniques and procedures. There are three approaches to value which have become standardized—the cost approach; the market approach; and the income approach.

(2) In the COST APPROACH, the appraiser estimates the cost of reproduction of the buildings and land improvements. A deduction is made for depreciation due to physical deterioration, and also for functional and economic obsolescence. The value of the land is

then estimated by comparison with sales of similar unimproved tracts and added to the depreciated value of the improvements. This procedure is also referred to as the Summation Approach. This approach is always applicable in the valuation of publicly owned structures such as schools, fire houses, etc.

(3) In the MARKET APPROACH, the appraiser compares the subject property on an overall basis with similar properties which have recently sold. Adjustments are made for all factors of dissimilarity. All known sales are considered, but the appraiser selects only those which are verified to be good ''arms length transactions'' and considered to be most similar to the property appraised. After these sales are analyzed and adjusted to the subject, this data is then correlated into a final estimate of value as indicated by the market.

(4) In the INCOME APPROACH, the appraiser estimates the probable gross and net income to be expected from the rental of the property, adjusts for the quality and durability of this income stream, and processes this income into a value estimate by use of an appropriate capitalization rate.

(5) The appraiser then correlates the indicated value estimates from the three approaches into a final estimated market value. Consideration is given to the relative strengths and weaknesses of each approach. Normally, the most weight is given to the approach commonly used by the typical purchasers of the type of property appraised. In almost all routine appraisals the market approach is most applicable.

(f) *Importance of the appraisal function.* The measure of success or failure in any real estate transaction is inseparably bound up in the matter of price. The heart of the real estate business is the price estimate or appraisal. The importance of sound appraisals for the Department of the Army cannot be over-emphasized. The courts have established basic rules governing exercise of the power of eminent domain.

(g) *Appraisal is an ''Estimate.''* The market value of any real estate interest is not a matter of exact determination, and the appraiser does not ''establish'' or ''determine'' the value. An appraisal is an ''estimate'' of current value based upon and supported by an analysis of all the factors, physical, economic, and social which influence the present and future benefits to be derived from the ownership of the property appraised.

(h) *The appraisal format.* In order to establish a degree of uniformity throughout the Corps as to an appraisal format, all staff appraisers and contract appraisers will follow the outline as set forth in the ''Uniform Appraisal Standards For Federal Land Acquisition'' and § 644.42.

### § 644.42 Appraisal report.

(a) *Preface.* The appraisal report is an important document which serves as a material aid in the acquisition of required real estate interests. It is also an indispensable factor in justifying expenditures of public funds. It is essential that the report indicates conclusively that the appraiser has considered and analyzed all available data and used logical reasoning and judgment in developing his value conclusions.

(b) *Scope of reports.* (1) It is the Corps' practice that all appraisal reports will be prepared in narrative form. The report will include, as a minimum, all essential data which will disclose the purpose, the scope of the problem and the principal techniques and approaches employed. The report should contain all the pertinent supporting data required to sustain the appraiser's final conclusion of market value.

(2) The use of preprinted narrative sales data sheets is authorized. Care should be exercised to properly relate each sale to subject in the narrative. Use of individual forms is also authorized for tabular exercises, such as the ''cost approach.'' In every instance the narrative should reflect the appraiser's reasoning.

(c) *Narrative report format.* (1) The following report format is taken verbatim from ''Uniform Appraisal Standards For Federal Land Acquisitions,'' published by the Interagency Land Acquisition Conference, 1973.

B-1. Contents of appraisal report: The text of the appraisal report shall be divided into four parts as outlined below:

PART I—INTRODUCTION

1. TITLE PAGE. This shall include (a) the name and street address of the property, (b) the name of the individual making the report, and (c) the effective date of the appraisal.

2. TABLE OF CONTENTS.

3. LETTER OF TRANSMITTAL.

4. PHOTOGRAPHS. Pictures shall show at least the front elevation of the major improvements, plus any unusual features. There should also be views of the abutting properties on either side and that property directly opposite. When a large number of buildings are involved, including duplicates, one picture may be used for each type. Views of the best comparables should be included whenever possible. Except for the overall view, photographs may be bound as pages facing the discussion or description which the photographs concern. All graphic material shall include captions.

5. STATEMENT OF LIMITING CONDITIONS AND ASSUMPTIONS.

6. REFERENCES. If preferred, may be shown with applicable approach.

PART II—FACTUAL DATA

7. PURPOSE OF THE APPRAISAL. This shall include the reason for the appraisal, and a definition of all values required, and property rights appraised.

8. LEGAL DESCRIPTION. This description shall be so complete as to properly identify the property appraised. If lengthy, it should be referenced and included in Part IV. If furnished by the Government and would require lengthy reproduction, incorporate by reference only.

9. AREA, CITY AND NEIGHBORHOOD DATA. This data (mostly social and economic) should be kept to a minimum and should include only such information as directly affects the appraised property together with the appraiser's conclusions as to significant trends.

10. PROPERTY DATA:

a. Site. Describe the soil, topography, mineral deposits, easements, etc. A statement must be made concerning the existence or nonexistence of mineral deposits having a commercial value. In case of a partial taking, discuss access both before and after to remaining tract. Also discuss the detrimental and hazardous factors inherent in the location of the property.

b. Improvements. This description may be by narrative or schedule form and shall include dimensions, cubic and/or square foot measurements, and where appropriate, a statement of the method of measurement used in determining rentable areas such as full floor, multitenancy, etc.

c. Equipment. This shall be described by narrative or schedule form and shall include all items of equipment, including a statement of the type and purpose of the equipment and its state of cannibalization. The current physical condition and relative use and obsolescence shall be stated for each item or group appraised, and, whenever applicable, the repair or replacement requirements to bring the property to usable condition.

Any related personalty or equipment, such as tenant trade fixtures, which are not attached or considered part of the realty, shall be separately inventoried. Where applicable, these detachable or individually owned items shall be separately valued.

d. History. State briefly the purpose for which the improvements were designed, dates of original construction and/or additions; include, for privately owned property, a ten-year record as to each parcel, of all sales and, if possible, offers to buy or sell, and recent lease(s); if no sale in the past ten years, include a report of the last sale.

e. Assessed value and annual tax load. If the property is not taxed, the appraiser shall estimate the assessment in case it is placed upon the tax roll, state the rate, and give the dollar amount of the tax estimate.

f. Zoning. Describe the zoning for subject and comparable properties (where Government owned, state what the zoning probably will be under private ownership), and if rezoning is imminent, discuss further under item 11.

PART III—ANALYSES AND CONCLUSIONS

11. ANALYSIS OF HIGHEST AND BEST USE. The report shall state the highest and best use that can be made of the property (land and improvements and where applicable, machinery and equipment) for which there is a current market. The valuation shall be based on this use.

12. LAND VALUE. The appraiser's opinion of the value of the land shall be supported by confirmed sales of comparable, or nearly comparable lands having like optimum uses. Differences shall be weighed and explained to show how they indicate the value of the land being appraised.

13. VALUE ESTIMATE BY COMPARATIVE (MARKET) APPROACH. All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms and conditions of sale. Each comparable shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.

14. VALUE ESTIMATE BY COST APPROACH, IF APPLICABLE. This section shall be in the form of computative data, arranged in sequence, beginning with reproduction or replacement cost, and shall state the source (book and page if a national service) of all figures used. The dollar amounts of physical deterioration and functional and

economic obsolescence, or the omission of same, shall be explained in narrative form. This procedure may be omitted on improvements, both real and personal, for which only a salvage or scrap value is estimated.

15. VALUE ESTIMATE BY INCOME APPROACH, IF APPLICABLE. This shall include adequate factual data to support each figure and factor used and shall be arranged in detailed form to show at least (a) estimated gross economic rent or income; (b) allowance for vacancy and credit losses; (c) an itemized estimate of total expenses including reserves for replacements.

Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.

16. INTERPRETATION AND CORRELATION OF ESTIMATES. The appraiser shall interpret the foregoing estimates and shall state his reasons why one or more of the conclusions reached in items (13), (14), and (15) are indicative of the market value of the property.

17. CERTIFICATION. This shall include statement that Contractor has no undisclosed interest in property, that he has personally inspected the premises, date and amount of value estimate, etc.

PART IV—EXHIBITS AND ADDENDA

18. LOCATION MAP. (Within the city or area)

19. COMPARATIVE MAP DATA. Show geographic location of the appraised property and the comparative parcels analyzed.

20. DETAIL OF THE COMPARATIVE DATA.

21. PLOT PLAN.

22. FLOOR PLANS. (When needed to explain the value estimate.)

23. OTHER PERTINENT EXHIBITS.

24. QUALIFICATIONS. (Of all Appraisers and/or Technicians contributing to the report.)

(2) The following exceptions are made to the above format:

(i) Estate, either a copy of the estate appraised should be included in the report or by reference in the report to the appropriate estate.

(ii) Legal description must be included in the appraisal report, either in the body or as an exhibit.

(3) Photographs of important buildings and unusual land conditions are considered an integral part of each appraisal report. Judgment should be exercised in conserving time and expense, and several small buildings can often be covered in one photograph. The use of color film and photographs is encouraged, especially wherein development cost either ''in-house'' or by outside firms is reasonable.

(d) *Brief appraisals.* (1) Brief narrative appraisal reports, of a one-to-four page composition, are authorized for use in many instances wherein the evaluation or per annum rental value does not exceed $3,600. The use of this type of report is encouraged and authorized for:

(i) Family housing appraisals,

(ii) Inleasing of privately-owned quarters and outleasing of government-owned quarters to civilian tenants,

(iii) The purchasing or leasing of undeveloped land,

(iv) Rentals of small office-type space (example: Recruiting facilities),

(v) Rights of way for utility lines and roadways,

(vi) Leases; easements, and

(vii) Other minor interests in real property.

(2) Appraisals exceeding $2,000 per annum rental are subject to the Economy Act, and the fee value must be shown if improvements are included. A brief or short form-type of appraisal is adequate.

(3) All appraisals will be supported by at least three comparable sales or rentals of similar properties. A narrative discussion of each will be included. In bulk acquisition projects the use of prepared sales data sheets is authorized and encouraged. Each sale or rental must be discussed and compared to the subject property within the narrative of the report.

(4) Brief narrative appraisals will be reviewed under the same requirements as normal appraisal reports.

### § 644.43 Gross appraisals.

(a) *Preparation.* (1) The gross appraisal sections of real estate design memoranda and planning reports are subject to minute scrutiny by higher authority in the Department of Defense and by Congressional Committees. It is essential that they be meticulously prepared to reflect actual market conditions and unit prices.

(2) Each gross appraisal will be supported by detailed analyses of an adequate number of typical comparable sales. Each index sale will be analyzed to show various land classifications

and values, building contribution estimates and other relevant information. The sales prices should be verified by someone having knowledge of the transaction.

(3) Where letter-type or brief real estate design memoranda on civil works projects are submitted, comparable sales data will be presented in one of the following methods:

(i) Be submitted within the report in a brief manner, with at least three truly comparable sales discussed in narrative form and comparisons shown to the subject lands covered by the memorandum.

(ii) Be referenced to the last real estate design memorandum issued on the same project and if values have changed in the interim, additional sales data submitted to support the changes. If the last design memorandum is over a year old, new supporting data must be submitted.

### § 644.44 Fee appraisals.

(a) *Definitions and procedures.* (1) The complete and unrestricted ownership of all the rights to the full use and enjoyment of a parcel of real estate is called the ''fee simple estate.'' An appraisal of this interest is referred to as ''Fee Value.''

(2) Most fee appraisals require the use of all three of the standard appraisal approaches.

(b) *Applicability.* Appraisals of the fair market value of the free and clear fee title to the subject property is necessary in the greatest majority of the Corps of Engineers' real estate responsibilities be it acquisition (full or partial), disposal, inleasing, outleasing, rentals, etc. In almost every case the monetary value of the required estate and interest is based on the fee value of the property; therefore, the Corps' greatest appraisal requirement is for fee appraisals.

(c) *Approaches.* (1) It is recommended that whenever possible all three of the standard appraisal approaches, Cost-Market-Income, be used in a fee appraisal. However, if due to the type of property, is is not practical, beneficial, or necessary to use a particular approach, the appraiser is required to indicate in his report that consideration was given to its use and discuss why it was not used.

(2) In the Cost Approach it is extremely important that the appraiser document all items of costs for development, construction, utilities, etc. It also is extremely important that he fully consider all forms of depreciation such as physical deterioration, functional obsolescence, economic obsolescence, etc., and justify his methods and factors used in developing his depreciation factors.

(3) The Market Approach or Comparative method of appraisal is the most direct approach to a market value estimate and is preferred above all others. It is basically an application of the principle of substitution wherein the sales of similar type properties are analyzed to develop a price at which an equally desirable and similar property can be obtained. It involves the collection and analyzing of current sales of comparable properties and comparing these sales to the subject property. Since no two properties are identical, the appraiser must make adjustments for differences between the two. Adjustments may be by a dollar amount (per unit, per acre, or lump sum) or on a percentage basis. Full support and justification must be given for each amount. Adjustments may be shown either by a tabular analysis or by a narrative discussion.

(4) The market value of an income-producing property is quite often governed by the net income it will produce. The fair market value may be estimated by developing the expected net income and processing it into a value estimate by use of an appropriate capitalization rate. The keynote of this approach lies in the sound development of a proper rate. The appraiser must have a basic knowledge of the principle and techniques involved and must be certain that he has adequate data to develop this rate and properly process the income into a fair market value.

(5) It is most important that the valuation estimates developed by all of the approaches used are correlated into one conclusive value. In those cases where there is a substantial spread among values, the appraiser is cautioned to recheck all his data and figures for accuracy. The cost figures and

depreciation factors should be checked in the Cost Approach; the sales data should be further documented and analyzed in the Market Approach; and the Income Method may require a recheck of the soundness of the capitalization rate.

(d) *Partial takings.* (1) A substantial number of acquisitions require only portions of an ownership necessitating a ''partial taking.'' In these cases the appraiser is required to estimate the value of the whole ownership before the taking; the value of the remainder—the difference being the value of the part taken. Many times the remainder is of less value after the taking, indicating a ''severance damage.'' The appraiser is usually required to allocate the total taking value between the value of the part acquired and the severance damage to the remainder by reason of the taking.

(2) In order to promote uniformity in the reporting format, the following example of the ''before'' and ''after'' method is presented for guidance:

| | |
|---|---|
| A 220-acre parcel of land is to be acquired from a 420-acre farm: | |
| Value ''before'' the taking ($300 p/ac) | $126,000 |
| Value of remainder ''after'' taking ($200 p/ac) | 40,000 |
| Total Value of part taken, including severance damage to remainder | $86,000 |
| Value of 220 acres taken ($300 p/ac) | 66,000 |
| Severance Damage to Remainder | $20,000 |

(3) The appraisal of the property before the taking must be a complete narrative-type appraisal containing adequate market data to support the total value. The report then must also include a full appraisal on the remainder portion of the property consisting of a full description of the residue immediately after the taking and a complete set of market data and sales other than those used in the ''before'' evaluation. If the remainder parcel has diminished in value as a result of the taking, the appraiser must have adequate support and justification for the reduction in value.

(4) In the case of partial takings, consideration must also be given to offsetting benefits applicable to the remaining property. A combination of legal interpretation of the law and judicial decisions with regard to such benefits must be used in determining whether offsetting benefits are applicable. Reference is made to paragraph A-9 and A-10 in the ''Uniform Appraisal Standards For Federal Land Acquisitions.''

(5) Paragraph A-13 of the ''Uniform Appraisal Standards'' is also referenced in connection with guidance regarding ''navigation servitude.''

(e) *Appraisal Certificate.* (1) No appraisal report will be considered acceptable without appropriate certification by the appraiser responsible for the contents of the report and the conclusion of values. The certification can be in the front or the back of the report, consistent with Division or District policy.

(2) An appropriate certification shall be substantially in accordance with the following: I certify that I have carefully examined the property described herein and that the estimates as developed in the report represent my unbiased opinion and judgment. I further certify that I have no interest, past, present or prospective, in the subject property which would affect my opinion and that the present fair market value of the (*insert estate appraisal*) is subject only to all the assumptions and limitations as specifically set forth. (Date and signature of appraiser.)

### § 644.45 Rental value.

(a) *Definition.* (1) The fair rental value of the property is the amount which, in a competitive market, a well-informed and willing lessee would pay and which a well-informed and willing lessor would accept for the temporary use and enjoyment of the property.

(2) Appraisals to establish fair rental values will be made in accordance with acceptable standards of appraisal applicable to the particular type of property and in accordance with general appraisal practices and procedures heretofore described in relating to all appraisal work. The preparation of time-consuming and lengthy appraisal reports should be kept to a minimum, particularly with regard to rental properties of low value. A brief summary of the essential facts will be sufficient to support leases by the Government of building space or unimproved land where the net rental value is not in excess of $3,600 per annum.

(b) *Applicability.* All provisions of this subpart are applicable to ''inleasing'' of

real property for use of the Government, and equally applicable to ''outleasing'' of Government-owned real property. Section 644.45(l) Government Quarters, is normally applicable only to ''outleasing'' of quarters to civilian employees. The provisions are, however, also considered valid considerations in appraising ''inleases,'' wherein privately-owned housing is being rented for occupancy by military personnel in lieu of quarters allowances.

(c) *Services.* In the absence of an agreement or contract, a lessor is not bound to furnish any utilities or building services of any kind, and such services may not be acquired under the power of eminent domain. It is, therefore, necessary for the appraiser to include in his report as separate items the estimated cost of all customary services that may be required to permit the normal use and occupancy of the property.

(d) *Market value of fee.* (1) Where temporary use of an entire building or other independent unit of an ownership is proposed, the appraisal will ordinarily report both the market value of the fee title and the fair annual rental value. However, no appraisal of fair market value of fee title is required in any case where assessed value, supported by statement of the assessor and ENG Form 869–R (15% Valuation Certificate), can be used for compliance with existing law, Section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), known as the ''Economy Act.'' Fee value is not required for land only leases, as the Economy Act is not applicable.

(2) An exception to the above procedure is in regard to the appraisal of family housing units. As an alternative, the appraiser can support his rental valuation by use of comparable rentals and a statement that the lease value does not exceed 15% of the fair market value.

(e) *Lease of minor portions of buildings.* Where appraisals are required to establish rental value of a minor portion of a building, it will not be necessary to estimate the fee value of the entire property, provided that the net annual rental does not exceed $2,000. A sound rental value can ordinarily be estimated by comparison with established rentals in subject property and in adjacent similar properties in the community. However, care should be exercised to insure the reasonableness of the reported comparable rental values. The appraiser's report must include sufficient data on these current rentals to support adequately the rental estimate for the subject space.

(f) *Unexpired lease.* Where the premises to be acquired are occupied by tenants under leases which cannot be terminated at will by the landlord, the appraiser's report will set forth in detail the terms of the existing leases and will show the value of the tenant's interest. The value of the tenant's interest is based on the fair rental value (economic rent) of the part of the property occupied by the tenant for the unexpired term of the lease, or for the term condemned, whichever is shorter, less the rent which the tenant is obligated to pay (contract rent) under the existing lease. The difference between the economic and contract rent is known as ''bonus rent.''

(g) *Bonus value.* Wherein a ''bonus rent'' is reflected as being the difference between economic and contract rent, a full narrative discussion will be included in the report. It is of paramount importance that the present economic rental be supported by the rental market data. The ''bonus value'' is the present worth of the discounted bonus rent.

(h) *Rental appraisal report.* The appraisal report will contain adequate facts and discussions relative to the following:

(1) Land description, showing street frontages and lot depths.

(2) Adequate description of improvements and furnishings, including type of construction, total floor space, floor load for storage space, number of rentable rooms, or income-producing space, nonproductive or public space, total cubic content, and reproduction cost of improvements less depreciation.

(3) Assessed valuation and lawful ratio to market value, if the annual rental value exceeds $2,000.

(4) Analysis and discussions of current rentals of similar properties and rental history of the property appraised.

(5) Discussion of the appraisal process and rental rates applicable to the terms of the proposed lease, particularly as to any differential in the rate of return applicable to customary long term rentals.

(6) Statement showing distribution of appraised annual rental as allocated to fixed charges and fair rate of return on land, buildings, and any furnishings or equipment that are included in the proposed taking.

(i) *Special purpose properties.* Appraisals to estimate the rental value of hotels, clubs, hospitals, and other highly specialized properties will include full information on the income capacity of the property under average competent management and under accepted standards of operation for the particular type of property involved. The appraisal reports will, among other things, contain an analysis and discussion of the following items:

(1) Financial history of property, including indebtedness, the actual past income or earnings of the property based upon audit reports for the past five years or longer, and any unaudited current months of the fiscal year. In the absence of audits, corporate statements may be furnished if properly certified.

(2) Discussion of the past operation and management methods with comments relative to any excessive or insufficient charges appearing in the financial statements obtained.

(3) Appraiser's estimate of the stabilized income of the property.

(4) Appraiser's estimate of profits available for typical lessee-operator.

(5) Recommendations of the appraiser as to the relative merits of acquiring fee title to the property as against acquiring a leasehold interest.

(j) *Farms and rural properties.* Appraisals to estimate the rental value of farms and other types of rural properties will report the present market value of the fee title, the fair annual rental value, and any direct damage to growing crops, standing timber, or improvements to be removed or destroyed. The damage will be reported separately from the rental value in order to permit the reflection of the damage in the primary rental term.

(k) *Industrial installations.* (1) Appraisal reports will be obtained to support all leases of industrial installations or portions thereof. It is important that appraisals of operating industrial installations be prepared by specially qualified appraisers or consultants intimately familiar with the particular processes and production capabilities and related factors having any bearing on the value of a particular plant.

(2) The appraisers selected to estimate the rental value should be fully informed as to all known prospective lessees and the amount of any bids, or offers made for the use of the property, and as to all terms, conditions, and limitations under which the property will be made available for use or operation.

(3) The appraisal reports will include a detailed inventory setting forth all physical factors pertaining to the land, buildings, machinery, and equipment and an adequate discussion of all local factors influencing the profitable use of the facility. Data pertinent to the prevailing rentals for other Government and privately-owned industrial plants and warehouses considered reasonably similar to the facilities to be leased will also be included. The conclusions of the appraiser as to other matters of importance to the Department of the Army in its leasing operations will likewise be presented. The appraiser should bear in mind that idle manufacturing plants, and all industrial properties, as a general rule, are valuable only to the extent and degree that they are usable in actual production. It is also a generally accepted economic fact that the plant and fixed equipment (real estate) is the production factor for which a return can ordinarily be realized after the cost of all other factors in production has been provided. Military necessity has required the construction of many plants which are designed for special purposes and which may tend to defeat the ordinary approaches to the market rental value problem. In the absence of comparable rentals of similar properties or other reliable comparative guides to value for temporary use, market rental

value should be estimated with particular consideration to the following methods:

(i) *Reasonable return on estimated fair value.* For this purpose ''fair value'' is defined as the prudent cost of reproduction less depreciation of only that portion of the property that is readily adaptable or capable of competition with alternative properties which may be available to or constructed by the proposed lessees. Items of equipment and any portions of a plant that do not directly contribute to the specific use may be eliminated from consideration and the rental return estimated only on items and space actually adaptable for use in the proposed enterprise. The appraiser is particularly concerned with any competitive disadvantages or penalties accruing to subject property by comparison with the alternatives available to prospective users. The rental estimate should therefore be appropriately modified with respect to adequate allowances for amortization of necessary alterations to be made by the lessee. Other operating disadvantages that might tend, from the competitive viewpoint, to result in increased operating cost or other penalties that might in any way be brought forward in negotiations to establish an acceptable rental price must also be considered.

(ii) *Ratio of plant costs to productive capacity.* In many lines of industrial enterprise, it may be possible to obtain comparable operating experience ratios with reference to relation of average annual real estate costs or plant investment charges to the gross annual production. The difficulties of estimating production levels and obtaining sufficiently accurate data as to actual operating experience are fully appreciated. Suggested sources of such information are annual statements of prospective lessees and their competitors. It is believed that this approach to the appraisal problem is fundamentally sound, particularly so when there is an indicated demand for the full capacity of an industrial plant as originally designed, and that this method will serve as a reasonable check and balance against return on ''fair value.'' It should also be very helpful as a guide to the rate of capitalization in the ''fair value'' approach to the rental problem.

(iii) *Taxes.* The appraisal will not be influenced by the fact that the Government is not presently required to pay taxes on the property.

(iv) *Savings.* When appropriate, the estimated savings in maintenance, protection, repair and restoration, if any, will be obtained by the Management and Disposal Branch from the using service or other competent authority and furnished to the appraiser preparing the appraisal report.

(l) *Government quarters.* (1) Rental schedules for Government quarters furnished to civilian employees will be supported by written appraisal reports reflecting adequate coverage of the following items:

(i) *Construction details.* Physical description of quarters will include the general grade of construction work, materials and decorations, number of rooms, floor space, porches, garages, general appearance and condition.

(ii) *Equipment and accessories:*

Refrigeration
Cooking facilities
Kitchen cabinets
Closet space
Built-in conveniences
Screening
Elevators
Telephone service
Utilities
Plumbing

(iii) *Furniture and furnishings.*

(iv) *Site conditions:*

Lot size
Lot size per living unit
Access (street and road frontage)
Restrictions
Land improvements (walks, driveways, shrubbery, lawns, topography, etc.)
Hazards and/or amenities

(v) *Neighborhood development and data:*

Local zoning regulation
Public transportation
Schools
Shopping facilities
Recreational facilities
Supply and demand for housing
Population statistics
General trends

(vi) *Comparable rental data.* Data will include results of a comprehensive survey of current rental rates applicable

to the most similar privately-owned housing in the nearest competitive or comparable neighborhood or community. Typical rental rates will be compiled, analyzed and tabulated, and subject properties identified and described in the same manner as prescribed above for Government quarters. The appraisal report should include a vicinity map showing location of rental units listed for comparison in relation to the location of the quarters being appraised.

(vii) *Comparative relationships.* The appraisal report will include a discussion of relative merits of Government quarters by comparison with private housing units. Rental rates of housing controlled by governmental agencies or subsidized by private industry will not be used as a basis for comparison.

(viii) *Correlation of rental units.* A discussion of basic reasoning supporting the final rental value unit for each distinctive rental bracket is imperative.

(ix) *Photographs.* Photographs of typical views of the quarters appraised and typical private housing units cited as comparable rentals will be included in each report.

(x) *Appraisal certificate.* Rental appraisal reports will not be considered acceptable without appropriate certification substantially in accordance with: ''I certify that the above rental values represent my unbiased opinion of the present fair market rental value of the quarters described. I am not now a tenant residing in such quarters nor do I have any intention of becoming a tenant therein.''

(2) Reappraisals of rental quarters are required every fifth year subsequent to previous appraisal. Rental rates will be adjusted annually between appraisals by application of the Consumer Price Index (CPI) maintained by the Bureau of Labor Statistics, Department of Labor, and as further required in accordance with Transmittal Memorandum No. 2, OMB Circular A-45, revised October 30, 1974.

### § 644.46 Easements.

(a) *Definition.* An easement is a property right of specified use and enjoyment falling short of fee ownership. It follows that the value of an easement is less than the market value of fee title to the same portion of property (exclusive of severance damages to residual portions).

(b) *Measure of value.* The measure of compensation for an easement is the amount by which market value of the ownership is diminished by the imposition of the easement. This should be developed by use of the ''before'' and ''after'' method of appraisal, the difference being the value of the taking.

(c) *Flowage easements.* (1) The appraisal of flowage easements will not be undertaken until flood frequency surveys have been completed and approved by proper authority. The flood frequency data will be made available to the appraisers with the definite understanding that it is to be accepted as one of the controlling factors in estimating the market value of the easements. The appraiser's certificate should be qualified to include the assumption that the frequency data is correct and that he has no responsibility therefore.

(2) The market value of fee simple title to each property over which a flowage easement is required will first be appraised in the usual manner. This estimate will be followed by appraisal of the market value of the property after imposition of the easement. The market value of the easement is then computed on the basis of the amount the market value of fee title is reduced by imposition of the easement. The appraiser will give full consideration to all factors having a bearing on the reduction in value of the parcel on which the easement is to be imposed. Each appraisal report will include complete information as to estimated flood frequency pertaining to each parcel appraised.

(3) The appraiser's major problem in appraising tracts having considerable value is the development of his value estimate after the imposition of the easement. The market data approach to value is limited in this phase of the appraisal to index sales of land reflecting the ''use adaptability'' of lands to a less profitable purpose. Typical of such change in highest and best use are the conversion of row crop land and orchard land to pasture and forestry. Likewise, the cost approach to value is applicable only to land improvements

and structures to be removed or destroyed. It is, therefore, considered essential that flowage easement appraisals reflect, in adequate detail, changes in utility by the development and use of the earnings approach to value before and after imposition in all cases involving lands capable of producing income. The ratios thus developed in ''before'' and ''after'' values for income producing lands should prove to be helpful in developing appropriate ratios for nonproductive lands.

(4) In those instances where the type of land, topography, flood frequency and duration data clearly indicate that a minimal change in value (not to exceed $100) will result from exercise of the required rights, a brief appraisal is authorized. The appraisal report will contain as a minimum a complete statement of pertinent facts, including information regarding flood frequency and duration data pertaining to the property appraised. In the event condemnation is required to acquire the necessary rights, an acceptable ''before'' and ''after'' appraisal will be prepared prior to the institution of condemnation proceedings.

(5) A tract map showing each contour level of varying flood frequency will be made a part of each appraisal report. This map should facilitate review of the appraisals and serve as an aid to the negotiator in his contacts.

(d) *Other easements.* It is recognized that many other types of easements, *i.e.*, road, pipeline, restrictive, borrow, transmission line, flight, spoil, etc. are to be appraised. In all instances, the measure of value is still the same, the amount by which the market value of the ownership is diminished by the imposition.

### § 644.47 Appraisal of other interests.

(a) *Minerals.* (1) In all cases, the value of the subsurface will be included or accounted for in the appraisal report in such manner that negotiations may be readily conducted to acquire or extinguish subsurface rights if they are outstanding in third parties or if it develops that the vendors desire to reserve them. In those instances where minerals are held separately in large blocks underlying several individual surface tracts, a statement to this effect should be included and the plan for appraising the mineral estate identified. Unless the person who is appraising the surface has had training and experience in appraising minerals, the subsurface appraisal should be made separately by an appraiser qualified to perform this service. Since the removal of certain minerals may destroy the usefulness of the surface, care should be exercised to avoid duplication of value.

(2) In the event that subsurface valuation is unfamiliar to the Division or District requiring same, HQDA (DAEN-REE) WASH DC 20314 should be contacted for advice and recommendations. Mineral valuation engineers within the Corps may be utilized on a cost reimburseable basis for furnishing gross or tract appraisals.

(b) *Timber.* (1) Where the land being appraised has only young trees or timber not of merchantable size, the value thereof will be included with the value of the land. If the timber is of merchantable size, a timber cruise will be made by a professional forester and the timber classified in the appraisal according to species, type, range of size, quantity, unit value, and total value. A discussion of logging, haulage, and market conditions will be given. The total value of timber shall be the amount by which the timber enhances the market value of the bare land.

(2) Extreme care must be exercised in the use of separate timber estimates for appraising timber land, so as to avoid ''doubling up.'' Where a timber cruise or estimate is used, comparable sales of recently timbered land should be used to support the remaining land value. Where such sales are not available, care must be utilized to extract the timber value from sales of timber land. The optimum situation would be to have sales that were also cruised; however, this does not often happen.

(c) *Growing crops.* (1) Crop appraisals will not ordinarily be necessary except in those cases where the Division or District has determined that possession of the cropland is necessary prior to the normal harvest period. Where the Division or District Engineer has determined that the landowner or his tenant cannot be permitted to harvest

the crops, they will be appraised as separate property items.

(2) The crop appraisal will identify the crops by type, number of acres, estimated yield per acre taking into account all hazards, the unit value, gross market value at maturity based upon current local prices for the commodities less cost of bringing to maturity, harvest, and delivering to available markets. The expected harvest period will be reported, together with other pertinent information, in order to indicate an approximate date when the cropland may be available for construction purposes.

(d) *Use of Government-owned property.* (1) An appraisal will be made, when required, to justify the consideration reserved in all leases, licenses and easements, except those specifically mentioned in paragraph (d)(3) of this section. The appraisal will be made in accordance with acceptable standards applicable to the particular type of property and the use to be made thereof in the proposed grant, and in accordance with the general appraisal practices and standards heretofore outlined in this chapter. Ordinarily the appraisals of property involving substantial improvements will include, in addition to complete coverage of all factors influencing the use of the property appraised, complete information as to the following:

(i) Data of acquisition and completion of Government construction.

(ii) Complete cost data as to original purchase price and Government construction.

(iii) Detailed discussion of the predominant uses to which the property is adaptable.

(iv) Competitive position of the property with respect to availability of privately-owned properties for similar use.

(v) Estimate of market value of fee title.

(vi) Estimate of annual rental value assuming unrestricted use over a reasonable period of time.

(vii) Estimate of annual rental value under proposed Government restrictions.

(2) Time consuming and lengthy appraisal reports should be avoided in the case of low value grants involving Government-owned property. The consideration in such cases may be substantiated by a simplified appraisal report by a qualified appraiser setting forth only such facts as are required to validate his conclusions as to value. In such instances, a physical inspection of the property may be waived where the appraiser is sufficiently familiar with the property under appraisals and local market conditions to prepare a reasonable value estimate of the estate to be appraised. When a property is not physically inspected, it will be so noted in the appraisal report. The decision concerning the necessity for a physical inspection of the property and analyzing local market conditions will rest with the appraiser signing the appraisal certificate since he is personally responsible for the value conclusion developed in the appraisal report. A low value grant for the purpose of this paragraph is defined as any grant for which the fair market rental value (before applying any offset in rental for estimated savings in maintenance, protection, repair and restoration) does not exceed the following:

Easement—$500 for the term.
Lease or License—$500 per annum if granted for not more than a five-year period and is granted after advertising.

(3) The following are exempt from the above requirements:

(i) Leases for land on which to construct new credit union facilities, under long-term leases. See DOD Directive No. 1000.10 for formula.

(ii) Concession leases under Graduated Rental System.

### § 644.48 Review and approval.

(a) *Procedure.* (1) Upon completion of an appraisal, the signed report is to be reviewed by a reviewing appraiser to assure that the information and data developed by the appraiser substantiates the estimated valuation. The review function also serves as a means of resolving differences that might be found in two or more individual appraisals of a single property. The reviewing appraiser is also responsible for maintaining consistency in appraisals for the various properties in a project.

(2) A review of all real estate appraisals is considered of vital importance to

the successful operation of the real estate mission of the Corps of Engineers. It is essential that each and every appraisal be given an independent review and check by a thoroughly qualified reviewing appraiser. This will insure that the appraisal represents relative concurrence as to value of not less than two real estate appraisers professionally qualified by previous experience in appraising the particular type of property involved. The reviewing appraiser should familiarize himself with the property to the extent that he can adequately present and support his opinion when called upon to do so.

(3) The review action will be documented by a separate narrative memorandum signed and dated by the authorized reviewing appraiser. Such review memorandum will indicate, but not be limited to, the following:

(i) Date and nature of physical inspection of the subject property.

(ii) Statement relative to reviewer's knowledge of comparable sales used.

(iii) Reviewer's opinion as to the appraiser's valuation.

(iv) Other pertinent data, if any, relative to the property or comparable sales that the reviewer feels would lend additional credence to value estimate.

(v) Reviewer's certification of approval, disapproval, or recommendation.

(4) If more than one appraisal is obtained for an ownership, all should be reviewed by the same reviewing appraiser. The reviewer can cover all appraisals in one review memorandum, or write individual reviews.

(5) No alterations or additions will be made to a signed appraisal report by anyone other than the appraiser who signed the report. A reviewer cannot change the value reflected or approve an amount other than the appraiser's final conclusion of value. His alternative is disapproval.

(6) A reviewing appraiser may not review other appraisal reports covering a property that he has himself previously appraised. In this instance the reports must be assigned to another reviewer or be forwarded to the next level of review for appropriate action.

(7) Appraisal reports obtained by the Department of Justice and submitted for Corps review are to be treated in the same manner as those obtained by the Corps.

(b) *Delegation.* (1) Division Engineers have been authorized to approve or take action as appropriate on all real estate appraisal reports made for the purpose of purchase, disposal, or any use of real property in which the estimated fair market value (of the part to be acquired, if a partial taking) does not exceed $250,000, or the estimated fair market rental value does not exceed $150,000 per annum.

(2) Division Engineers have been authorized further, at their discretion, to redelegate any part of this authority, up to $150,000, to District Engineers.

(3) All appraisals exceeding $250,000 will be forwarded to HQDA (DAEN-REE) WASH DC 20314 for final review, approval, and/or appropriate action. Each report will be thoroughly reviewed at all levels, including the Project, District and Division.

(4) A copy of all those reports between $100,000 and $250,000 will be forwarded to DAEN-REE for post review and retention.

(5) In addition to those reports which exceed the delegated authority, DAEN-REE will review and take appropriate action on complex, difficult and controversial appraisals. Where more than one appraisal has been made within either of these categories, a copy of each appraisal report should be submitted for review regardless of variances in opinions of value. At times, the Division Engineers may receive specific instructions as to appraisals which may require final approval of DAEN-REE. Also, from time to time, DAEN-REE may call for and review typical appraisals prepared by individual appraisers.

(c) *Reconciliation of appraisal reports.* In the event that a reviewing appraiser does not agree with the value conclusion of the appraiser, the following steps should be taken:

(1) Attempt to reconcile differences with the appriser in a face-to-face meeting. The reviewing appraiser should present his additional evidence of value to the appraiser and discuss the report weaknesses, if any.

(2) In the event reconciliation and approval are not possible, the reviewer

must then forward the report and review certificate to higher authority for resolution and request that another appraisal be obtained.

(d) *Qualifications of reviewing appraisers.* (1) A reviewing appraiser should have a minimum of five years experience in the field of real estate appraising. He should also have taken and successfully completed two or more appraisal courses offered by professional appraisal organizations. His experience record should indicate that he has thorough knowledge of all the standard appraisal techniques and approaches and has the ability to analyze the market and all pertinent data which affects value.

(2) Upon selection and appointment by the District Engineer of qualified staff personnel to act as reviewing appraisers, a copy of their qualifications and experience records, along with a copy of the appointing orders, will be forwarded to HQDA (DAEN-REE) WASH DC 20314.

(e) *Code of ethics.* Under no circumstances will an appraiser be directed to make an appraisal at any predetermined amount or to change his opinion of value on any property appraised. It is recognized that the review function will develop some differences of opinion. However, where those differences cannot be resolved on a higher ethical basis, predicated upon sound reasoning and adequate data properly analyzed and applied, an additional appraisal will be obtained.

### § 644.49 Contracts.

(a) *Appraisal reports.* (1) Within their contract authority, Division and District Engineers may contract with recognized appraisal firms, corporations and individuals for necessary appraisal reports on a lump sum basis. Following the award of any appraisal contract in excess of $5,000 a copy of such contract will be forwarded by the issuing office direct to HQDA (DAEN-REE) WASH DC 20314, immediately upon execution.

(2) Requests from Division and District Engineers to the Chief of Engineers for names of appraisers qualified to make particularly complex appraisals are invited.

(3) Division and District Engineers will develop and maintain current lists of qualified appraisal firms, corporations and individuals, from which contractor selection will be made. These lists should be appropriately grouped or rated in accordance with special qualifications and experience in connection with various and specific types of appraisal problems.

(4) Prior to receipt of proposals and negotiations with appraisers, a target fee (Government estimate) will be developed with due consideration to the relative skill and ability required in solving the appraisal problem and the appraiser's time and expense required for preparing the desired reports.

(5) In the negotiation of appraisal contracts the following items are to be considered:

(i) The appraisal of real estate is a recognized profession governed by a code of ethics prohibiting competition in obtaining appraisal assignments. All negotiations for proposals will be conducted on an individual basis, with adequately qualified appraisal firms, corporations or individuals competent to deliver the required appraisal reports on schedule.

(ii) In view of the technical nature of appraisals, Division and District Engineers shall give consideration to designating qualified member(s) of their real estate staffs as contracting officer's representative(s) with full responsibility for all cost estimates involved in contracting for appraisal services and reports. Such contracting officer's representative(s) may also, in the designation of the contracting officer, be utilized to conduct negotiations with the prospective contractors, serve as ordering officer pursuant to the contracts, certify invoices and act in any other capacity within their authority as contracting officer's representative(s).

(6) A copy of the narrative, detailed record of contract negotiations will be forwarded to DAEN-REE, along with the contract as specified above.

(7) In contracting for appraisal reports, contract forms as set forth in Armed Services Procurement Regulations (ASPR) (chapter I of this title) and ER 1180–1–1 (Engineer Contract Instructions) will be used. An outline of the qualifications of the appraiser employed to perform the contemplated

services shall be included in the contract assembly.

(b) *Expert appraisal services.* Employment of qualified real estate appraisers and consultants may be effected utilizing the pertinent provisions of ASPR and ER 1180–1–1.

(c) *Obtaining appraisal reports by purchase order.* (1) Division and District Engineers are urged to utilize an authorized type of purchase order, such as DD Form 1155, in lieu of long-form contract, provided that:

(i) It is in the best interest of the Government, cost wise, not to issue the long-form contract.

(ii) The contractor has performed satisfactorily on at least one contract within the prior three fiscal years.

(iii) The total order, by such purchase orders, from the contractor does not exceed $10,000 for the project during the current fiscal year.

(iv) The order is accompanied by a brief history of negotiation signed by both the contractor and the contracting officer's representative(s).

(2) Care should be exercised to insure that the above provisions are used only to order supplementary reports, single appraisals, and other ''one-time'' reports needed.

(d) *Department of Justice consultation.* Authorized local representatives of the Department of Justice will be consulted concerning the acceptability of the appraiser(s) prior to negotiating any appraisal contract covering tracts proposed for acquisition. The local representative must also approve the per diem fee to be utilized in the appraisal contract. Where agreement cannot be reached between the Division or District Engineer and the local representative of the Department of Justice as to the selection of the appraiser(s), a complete report will be submitted to DAEN-REE, for resolution with the Attorney General.

(e) *Interdepartmental services.* Division Engineers are authorized to arrange for interdepartmental services of qualified specialists in the regular employ of other Government agencies in connection with special problems concerning mineral deposits, water rights, timber cruises, etc. Division Engineers are further authorized, in their discretion, to redelegate this authority or any part thereof to District Engineers.

## Subpart C—Acquisition

PROCUREMENT OF TITLE EVIDENCE, TITLE CLEARANCE, AND CLOSINGS

### § 644.61 General.

(a) *Purpose.* Sections 644.61 through 644.72 describe the procedures relating to the procurement of title evidence, title clearance, and closings for the acquisition of real estate and interests therein for all land acquisition programs administered by the Chief of Engineers. Exceptions in connection with the acquisition of properties under the Homeowners Assistance Program are set forth in subpart E.

(b) *Applicability.* These sections are applicable to all Division and District Engineers having real estate responsibility.

(c) *Guidelines.* (1) The satisfactory progress of land acquisition programs necessitates the prompt procurement of title evidence and prompt title clearance. One of the following types of title evidence should be obtained, after considering the cost of the several types and other factors mentioned below. To effect these objectives, careful planning is essential, including a determination of the most acceptable and available type of title evidence and the source from which such title evidence may be procured. The Chief of Engineers is responsible for procuring all title evidence, including title evidence needed for lands which are acquired by condemnation proceedings. The early procurement and examination of the title evidence and title clearance will expedite payment to landowners from whom offers are obtained or against whom condemnation proceedings are filed.

(2) Insured certificates of title or policies of title insurance shall be obtained wherever possible. This is on the theory that the Government is buying title searching service as well as the title evidence itself and is avoiding the time and cost of examining abstracts of title, generally voluminous in nature.

(3) Where it is not possible to obtain certificates of title or title insurance,

abstracts of title may be obtained, as a last resort.

(4) As used in these sections, an abstract of title is a synopsis or digest of all instruments of record affecting the title to a specific parcel of land. It neither guarantees nor insures the title. A certificate of title is a contract whereby a title company certifies that title to a specific parcel of land is good and unencumbered of record in a named person excepting only such defects and encumbrances as are shown therein. The liability of the company is limited to an amount specified in the certificate. A title insurance policy is a contract which insures that the owner or mortgagee will not suffer any loss or damage by reason of defects in the title to the property, or liens or encumbrances thereon existing at the date of the policy, except those defects, liens, or encumbrances which the policy specifically excepts. Liability thereunder is not limited to matters of record but extends to matters beyond the record.

(5) The Directory of the American Land Title Association may be obtained upon request to the Association at 1828 L Street, NW., Washington, DC 20036, or to any major title insurance company. This Directory lists, by States, the abstract and title companies which provide title insurance. These companies are acceptable to the Attorney General. Requests for furnishing title certificates or title insurance should be made to the major title insurance companies in addition to local abstractors and title companies.

(6) From past experience, it is considered that the procurement of certificates of title or title insurance is more economical than abstracts of title and the use of these types of title evidence expedites payment to landowners. In the majority of the States either certificates of title or title insurance are obtainable and the premium for issuance of such certificates or policies is based on a schedule of fees approved by the State Insurance Commission or some similar State agency. The premium fixed by such schedules, in most cases, includes the charge for title examination (preliminary certificate of title or preliminary binders) and the charge for insurance (final certificates of title or title guarantee policy) and any variance from the prescribed fees is considered a violation of the Sate law or regulation. Most State Insurance Commissions have recognized and approved the forms of certificates of title and title insurance policies prescribed by the Attorney General and have authorized their use in lieu of owners' policies. Division and District Engineers should familiarize themselves with the State title insurance laws and regulations. If prices quoted by all possible sources seem exorbitant, the matter should be referred to HQDA (DAEN-REA-P) WASH DC 20314 for action.

### § 644.62 Title evidence.

(a) *Acceptable Types of Title Evidence.* (1) Certificates of title are acceptable title evidence. Certificates of title must be in a form acceptable to the Attorney General. An acceptable form of certificate of title which has been approved by the Attorney General has been issued by the Chief of Engineers as ENG Form 903, Certificate of Title.

(i) In contracting for certificates of title, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, will be used.

(ii) Any title or abstract company approved by the Department of Justice and authorized and qualified to issue certificates of title in the State where the land is located will be acceptable to furnish certificates of title (Department of Justice ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States, 1970.'') In those few jurisdictions where bar associations or other public or professional bodies hold that the issuance of certificates of title is the issuance of title opinions and therefore the practice of law and where title companies as corporations cannot engage in the practice of law, insured certificates of title may be procured from attorneys, acceptable to the Lands Division of the Department of Justice, acting as agents for title companies. The procedure for the selection of attorneys is set forth in § 644.63(b).

(iii) Certificates of title will be based on a search of all records affecting the title to the land and be unqualified as

to the period of search. In the event that it is not practicable to obtain certificates of title, unqualified as to the period of search, all pertinent facts will be referred to the Department of Justice for consideration and approval.

(iv) Certificates of title or title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. If property is acquired by donation or exchange, the value will be determined by the Corps of Engineers. However, as to acquisitions valued at more than $50,000, the liability of the title company may be limited to 50 percent of the first $50,000 and 25 percent of that portion of the value in excess of that amount. This limitation on the general rule has been approved by the Department of Justice. The appropriate ENG Forms for specifications for supplying title evidence may be amended, if that limited liability can be obtained. A certificate of title or title insurance policy by one title company for a single acquisition valued at more than 25 percent of the admitted assets (after deducting existing liabilities secured or unsecured and excluding any trust or escrow funds) of the issuing company is not acceptable.

(v) Generally, it is not necessary to obtain a final certificate of title when land is acquired by condemnation proceedings. However, it may be necessary that an intermediate certificate of title be obtained setting forth the limitation of liability of the title company. Division and District Engineers will be governed by the requirements of the local United States Attorney as to the necessity of obtaining an intermediate or final certificate of title.

(vi) Certificates of title, whether preliminary, intermediate, or final, will be procured in sufficient numbers to satisfy the needs of the District involved. Normally an original and two signed copies of each certificate of title will suffice.

(vii) The specifications may be supplemented to require the title company to have a local representative stationed convenient to the project office, when, because of the nature of the project (anticipated complexities of title; high purchase prices, or other reasons), it is considered advisable that a local representative be available to perform preclosing interim title searches on request of the Contracting Officer.

(viii) The title company's local representative must be authorized to pass on the sufficiency of the proposed deed to the United States; to give final approval of curative material furnished to satisfy title objections set forth in certificates of title; and to testify in court relative to the status of title, if called upon to do so.

(2) Title guarantee or title insurance policies are acceptable title evidence.

(i) Interim binders on owner's title guarantee or title insurance policies supplemented by an owner's title guarantee policy or title insurance policy in the forms approved by the Attorney General (ENG Form 1014), Interim Binder on Owner's Title Guarantee (Insurance) Policy, and ENG Form 1015, Owner's Title Guarantee (Insurance) Policy will be acceptable as evidence of title only in acquisition in those States where certificates of title may not be issued. ENG Form 3893–R is the form of endorsement for use with the title insurance policies when changes or corrections become necessary. No other substantial variation in the form of interim binder or the form of title guarantee or title insurance policy will be acceptable without prior approval of the Attorney General.

(ii) Companies contracting to issue such interim binders or preliminary reports and title guarantee or title insurance policies must have authority under the laws of the State of their incorporation and their charter to issue the same. They must also be financially sound and be willing and able to issue such binders and policies for all tracts for the amount of liability as set forth above.

(iii) In contracting for title guarantee or title insurance policies, ENG Form 1016, Specifications for Furnishing and Delivering Certificate of Title Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, will be used.

(iv) The interim binder or preliminary report must disclose the title holders of record and contain full information on all matters set forth in the binder as affecting the title. This data

must be in sufficient detail to enable an attorney examining the report to determine the nature and extent of such matters and their effect on the validity of the title of the land described therein. The contents of the report must meet the requirements of ENG Form 1016.

(v) The provisions of paragraphs (a)(1) (iv), (v), (vi), (vii) and (viii) of this section also apply to title guarantee or title insurance policies.

(3) Abstracts of title may be acceptable title evidence.

(i) Abstracts if title complying with the rules for abstracts in ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States'' issued by the Department of Justice, 1970, are acceptable title evidence if prepared by abstractors acceptable to the Attorney General. These may include abstractors employed by a department or agency of the Government. Corps of Engineers personnel generally will not prepare abstracts of title. However, where there is a comparatively small amount of abstract work to be performed, it may be desirable to have the abstracts prepared by qualified Government personnel. In such cases, the prior approval of the Chief of Engineers will be obtained. The request should justify the preparation of abstracts by Government personnel.

(ii) The form and contents of abstracts of title will meet the requirements in the ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States'' (Department of Justice, 1970) and ENG Form 1012, Specifications for Furnishing and Delivering Abstracts of Title.

(iii) The period of search of an abstract of title to be acceptable to the Attorney General will, wherever possible, begin with some undisputed source of title such as an original grant or patent from the sovereign. Where it is impossible or impracticable to begin with such grant or patent, refer to ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States'' (Department of Justice, 1970) and ENG Form 1012 for guidance.

(iv) In contracting for abstracts of title, ENG Form 1012 will be used. ENG Form 1012 provides for an unlimited period of search. For the purpose of conserving Government funds and in applicable easement acquisitions, Division and District Engineers are authorized to modify ENG Form 1012 to provide for the minimum period of search allowable under the regulations of the Department of Justice, when deemed to be to the best interest of the Government.

(4) Where the consideration to be paid by the Government is $1,000 or less, acquisition in fee may be based upon a title search by a staff attorney when it is deemed to be in the best interest of the Government. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument transferring title recorded at least 40 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title shall also prepare an Abstract of Title evidencing the results of his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

(b) *Easements.* The standards and requirements as to title evidence for fee acquisition, set forth above, will be observed in the acquisition of all easements, except as follows:

(1) Preliminary certificates of title of approved title companies for easement acquisitions will be in the same form approved by the Attorney General for fee acquisitions and issued by the Chief of Engineers as ENG Form 903. Final certificates of title in easement acquisitions, however, must show title to the easement vested in the United States in the same land described in the certificate and the deed to the

United States. A form of final certificate of title for easements approved by the Attorney General and issued by the Chief of Engineers as ENG Form 1017, Final Certificate of Title for Easements, will be used in easement acquisitions.

(2) In contracting for certificates of title to easements, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title, Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, may be used provided the following paragraph is substituted in the detailed specifications: ''Each certificate of title shall be executed in triplicate on legal size paper. Preliminary certificates of title shall be in the form attached hereto, ENG Form 903, and final certificates of title for easements, showing title vested in the United States, shall be in the form attached hereto, ENG Form 1017.''

(3) In jurisdictions where it is not possible to obtain certificates of title commercially, title guarantee (insurance) policies may be obtained. In such cases, appropriate adjustment in forms and specifications will be made, comparable to those prescribed for certificates of title to easements above.

(4) For easements costing more than $100 but not in excess of $5,000, the requirements of the Attorney General have been waived. In such cases, it is acceptable to use certificates of title prepared and executed by a qualified Corps of Engineers' attorney. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument transferring title recorded at least 25 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title shall also prepare an Abstract of Title evidencing the results of his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

(5) As to easements which cost $100 or less, acquisition shall be in accordance with the provisions of paragraph (5) on page 5 of ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States'' (Department of Justice, 1970) which permit such acquisition to be based on a last owner search. Any search authorized by these provisions may be conducted by a qualified attorney employed by the Corps of Engineers.

### § 644.63 Contracting for title evidence.

(a) *Survey of area and source of title evidence.* Contemporaneously with the preparation of the real estate design memorandum, or real estate planning report, the Division or District Engineer is requested to:

(1) Give careful consideration to the problems involved to determine the most acceptable type of title evidence, its source, availability of title plants, costs, and time of procurement, so that the most advantageous bid(s) may be received and accepted and the acquisition schedule maintained. In considering costs of abstracts of title versus certificates of title or title insurance, the workhours involved in the examination of abstracts of title by both Corps and Department of Justice personnel should be considered.

(2) Determine the total number of tracks in the project area. In major projects, it may be desirable to invite bids for title evidence for each county or other specified areas, in addition to the entire project, in order to maintain the acquisition schedule.

(3) Determine the names and addresses of title companies and abstractors available to furnish title evidence and whether such companies or abstractors have been approved by the Attorney General as acceptable companies or abstractors. Current information on approved title companies and abstractors may be obtained direct from the Land and Natural Resources Division, Department of Justice, WASH DC 20530.

(b) *Selection procedure.* (1) Normally selection of persons or firms to perform

title evidence services will be based upon formal advertising in accordance with the Armed Services Procurement Regulation (ASPR) (chapter I of this title).

(2) In those States where the furnishing of title evidence is held to constitute the practice of law and the State canons of legal ethics prohibit attorneys from engaging in competitive bidding for such services, contracts for title evidence services must necessarily be negotiated. In such cases, negotiations shall be conducted with attorneys or law firms duly authorized to practice law in the jurisdiction within which the real property is located. Division and District Engineers shall notify HQDA (DAEN-REA-P) WASH DC 20314 before negotiating for title evidence, and submit the list of attorneys with whom negotiations may be conducted. Selections shall be in accordance with the procedures set forth below:

(i) A contract for title services shall be based upon, but not limited to, consideration of the following professional qualifications necessary for the satisfactory performance of the services required:

(A) Professionally trained for type of work;

(B) Specialized experience in the type of work required;

(C) Capacity to accomplish the work in the required time;

(D) Past experience, if any, with respect to performance on Corps of Engineers contracts;

(E) Location in the general geographical area of the project to which the services relate: *Provided,* That there is an appropriate number of qualified attorneys or law firms therein for consideration; and

(F) Volume of work previously awarded, with the objective of effecting an equitable distribution of title evidence contracts among qualified attorneys and law firms.

(ii) A preselection list of qualified attorneys and law firms shall be prepared by a preselection board from data submitted by interested attorneys and law firms and from other pertinent information which may be available. The list shall be approved by the District Engineer or his designee.

(iii) A selection board shall review the qualifications of each of the attorneys or law firms on the preselection list, in accordance with the procedure established in paragraph (b)(2)(i) of this section and shall recommend to the District Engineer, in order of preference, a minimum of three for approval for contract negotiations.

(iv) Upon approval of the selections by the District Engineer and such approval as may be required by paragraph (b)(2)(vi) of this section, negotiations shall be initiated with the first selected attorney or law firm. If the negotiations result in a price which exceeds the Government estimate, revised to correct errors of fact or judgment, if any, by more than ten percent, the Contracting Officer shall terminate the negotiations and request a proposal from the attorney or law firm next in order of preference.

(v) Preparation of preselection lists and selections for contracts estimated to cost more than $10,000, shall be accomplished by formally constituted boards consisting of at least three members, one of whom shall be the District Counsel or an attorney on his staff, and one of whom shall be the Chief, Real Estate Division, or a member of his staff.

(vi) Special approval shall be required for certain selections as indicated below:

(A) When the estimated cost of a contract to be negotiated exceeds $100,000, the selection shall require the approval of the Division Engineer.

(B) When an attorney or law firm, to which the District has awarded contracts totalling over $100,000 during the current fiscal year, has been selected by the District for additional negotiations, the selection shall require the approval of the Division Engineer.

(C) When the estimated cost of a contract to be negotiated exceeds $200,000, the selection shall require the approval of the Director of Real Estate, OCE, or his designee, with the concurrence of the Chief Counsel or his designee.

(c) *Forms to be used.* When purchasing title evidence, Standard Form 33, Solicitation, Offer, and Award, which form embraces an invitation, bid, and acceptance, should be used with copies of ENG Form 1012 or ENG Form 1016,

depending upon the type of title evidence to be obtained. Standard Form 33 will state that time is of the essence; that ability to comply with delivery requirements is mandatory; that the specifications attached thereto constitute a part of the proposed contract; the quantity and description of the supplies by item to be furnished; the time, place, and method of delivery; and the primary period of contract and extensions. Bids must be submitted in the form required by the invitations for the bids, so that the successful bid can be accepted on Standard Form 33 and a formal contract consummated thereby. The contract must incorporate all the covenants, terms, and conditions which are contemplated.

(d) *Base price vs. per-item basis.* The invitation will call for the furnishing of an approximate number of certificates of title, abstracts of title, or preliminary binders and title guarantee (insurance) policies, as the case may be, at a stated price per certificate of title, abstract, or preliminary binder and title guarantee (insurance) policy. If this basis of payment is not possible, payment for abstracts may be made on a per-item or per-page basis and certificates of title and interim binders and title guarantee (insurance) policies may be paid for in accordance with an established rate schedule based on the cost of the property. Where necessary, alterations in the payment paragraphs of the specifications may be made in order to comply with local practices, State statutes, or other special requirements.

(e) *Specifications.* The specifications for title service will follow ENG Form 1012 for abstracts, ENG Form 1016 for certificates of title and ENG Form 1014 for interim binders on owner's title guarantee (insurance) policies. Additional provisions may be added as circumstances require, but basic requirements will not be changed.

(f) *Several contracts for title evidence.* To meet the acquisition schedule, it may be necessary to enter into several contracts for title evidence to lands within a designated project area. In such cases, the portions of the projects to be covered by each contract will be defined according to established political subdivisions, such as districts, townships, counties, or any specified part thereof.

### § 644.64 Award of contracts.

(a) *Contract awards.* Contract awards will be made only by duly qualified contracting officers in accordance with applicable procurement regulations.

(b) *Review of title evidence contracts.* The Contracting Officer, if an employee of the Real Estate Division, or otherwise the Real Estate representative designated by the Division or District Engineer, will review contracts for title evidence. If this review is made by a Real Estate employee other than a Contracting Officer, he will advise the Contracting Officer relative thereto. The Contracting Officer or the Real Estate representative will ascertain that the Department of Justice has approved the bidder, and the contract will not be awarded to any bidder not so approved. The Contracting Officer or the Real Estate representative who is to advise him, will familiarize himself with ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,'' issued by the Department of Justice, 1970.

(c) *Distribution.* Upon acceptance, copies of title evidence contracts will be distributed in the same manner as other contracts.

### § 644.65 Ordering title evidence.

(a) *Placing orders.* Where the contract does not specify the order in which title evidence for particular tracts will be furnished, orders will be submitted to the abstractor or title company on ENG Form 1011, Order for Title Evidence. An accurate legal description of the tract of land involved will be attached to the order or will be typed thereon.

(b) *Orders based on contiguous areas.* If the contract does not contain a list of tracts for which title evidence is to be furnished, orders will be based on contiguous areas of land in identical ownership and will be deemed to be contiguous even though crossed by roads, railroads, rights-of-way, or streams. In such event the variation in quantity shall not exceed plus or minus ten percent as prescribed by ASPR. If there has been a severance of surface and subsurface estates, determination of

what constitutes a tract will be based on ownership of the surface. However, in unusual cases where such a contiguous area is composed of several parcels derived through separate chains of title and requiring separate searches of each chain of title down to a comparatively recent date or where such contiguous area lies in more than one section, the Contracting Officer may contract to pay a specified reasonable additional charge for each such additional chain or section if such additional charge is customary in the locality where the land lies.

(c) *Type of title evidence.* The order will set forth the type of evidence to be furnished. When abstracts are contracted for, the following rules will be observed:

(1) If an abstract of title in satisfactory form cannot be procured from the landowner, a new abstract will be ordered.

(2) If an abstract in satisfactory form is procured from a landowner, the abstract will be transmitted to the abstractor with an order for a continuation of the old abstract.

### § 644.66 Payment for title services.

(a) *Approval.* The Contracting Officer will approve payment for all title evidence obtained in connection with the acquisition of land from funds available to the Division or District Engineer for that purpose, whether the land is acquired by purchase or condemnation.

(b) *Review.* When abstracts are furnished on a per-item or per-page basis, the contents must be carefully reviewed by a qualified representative of the Division or District Engineer, to insure that bills are not excessive and that abstracts do not include superfluous material. Where erroneous or superfluous material is included in abstract, the bills involved will be corrected so that payment for such material is not made. All title evidence will be examined to determine that there has been full compliance with the specifications.

(c) *Payment for title evidence.* Payments for title evidence will be made by the Contracting Officer from available funds for the project to which the title evidence pertains, upon receipt of certified and approved vouchers.

(d) *Preparation of Invoices for Title Services.* The abstractor or title company will submit a certified invoice for services rendered, to the office to which the title evidence was delivered for review. The invoice must specify the particular type of title evidence furnished, the tract number, name of owner, name of project, and contract number. Invoices found to be correct will be certified as to receipt of the services by the receiving office and will be transmitted to the Division or District Engineer for further action and payment.

### § 644.67 Approval of Title by the Attorney General.

(a) *General.* Section 355 of the Revised Statutes of the United States, as amended (40 U.S.C. 255), formerly required the written opinion of the Attorney General in favor of the validity of the title to lands as a prerequisite to the expenditure of public funds thereon.

(b) *Delegation.* Pursuant to the provisions of Pub. L. 91–393, approved September 1, 1970, authority to approve title to lands being acquired for the use of the Department of the Army, or of any other department or agency for which the Department of the Army is authorized to acquire land, has been delegated to the Department of the Army, subject to the supervision and review of the Attorney General. Generally, military authorization and/or appropriation legislation expressly authorizes construction on the land prior to approval of title.

(c) *Redelegation.* The authority delegated to the Department of the Army pursuant to Pub. L. 91–393 has been redelegated to Division and District Engineers with real estate responsibility.

(d) *Issuance of title opinions.* Division and District Engineers are authorized to designate staff attorneys to give written approval of the sufficiency of title to land for the purposes for which the property is being acquired. Such attorneys shall issue preliminary and/or final opinions of title.

(1) Attorneys designated for such purposes will have as a minimum five years legal experience, from the date of

admission to a State bar, including three years experience in the law of real property. Real estate attorneys on the staffs of Division and District Engineers, who possess these qualifications, will be designated by the Division and District Engineers, in writing, to pass on the sufficiency of title to lands pursuant to the said delegation. The names of such attorneys shall be furnished to HQDA (DAEN-REA-P) WASH DC 20314 as soon as possible.

(2) A final opinion of title shall be issued in all acquisitions, except for easement acquisitions not in excess of $1,000 which are governed by § 644.69(b).

(3) Division and District Engineers are authorized to waive the issuance of written preliminary opinions of title where the closing of the case is based upon a certificate of title or title insurance issued by an acceptable and approved title company, in either fee or easement acquisitions.

(4) A preliminary and a final opinion of title shall be issued in all fee and easement acquisitions involving abstracts of title, except for easement acquisitions not in excess of $1,000 which are governed by § 644.69(b).

(5) Any final title opinion issued pursuant to the delegated authority shall substantially follow the format of the Attorney's Final Title Opinion (Figure 5–3 of ER 405–1–12).

(e) *Opinion of Attorney General.* Whenever the District or Division Engineer determines that a title defect is of such character that a possibility exists that it may be waived, the case shall be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for review and transmittal to the Attorney General for a title opinion. The letter of submittal shall contain or be accompanied by the information and data required by § 644.72(b).

(f) *Rejection opinion.* If it is obvious that no possibility of waiver of a title defect exists, a title opinion shall be issued according to the procedure set forth in § 644.67(d). Copies of such opinion shall be submitted with the condemnation assembly.

### § 644.68 Title Clearance—Certificate of Title and Title Insurance.

(a) *Curative action.* Upon receipt of an acceptable certificate of title, ENG Form 903 or an interim binder on an owner's title guarantee or insurance policy, ENG Form 1014, the title evidence will be reviewed by a qualified real estate attorney of the Corps of Engineers. Where the title evidence indicates that the acquisition of the land or interest therein by purchase is feasible, and a satisfactory ENG Form 42, Offer to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, is received from the landowner and accepted by the Government, curative action will be conducted and curative material will be processed as follows:

(1) With regard to the title objections set forth in Schedule ''B'' of certificates of title or interim binders, it will be necessary to take such curative action as will insure the issuance of a final certificate of title or title guarantee or insurance policy showing title vested in the United States of America, subject only to those objections, if any, which have been administratively waived.

(2) As set forth in the title contract, the title company will authorize its local representative to give final approval of curative material furnished to satisfy such objections and insure their elimination from the final certificate of title or title guarantee or insurance policy. As such curative material is approved, the local representative of the title company will:

(i) Initial, or otherwise indicate, on the margin of the preliminary certificate or interim binder, the fact that the objection has been eliminated through the procurement of satisfactory curative material.

(ii) Determine whether or not he wishes the curative instrument recorded and if the instrument is to be recorded, so indicate on the margin of the certificate or interim binder. By the express terms of the offer to sell, the vendor is responsible for payment of recording fees on such curative material.

(iii) Where curative material is not recorded, the title company will be permitted to retain such material if they wish it for their files; otherwise, it will be placed with the title assembly. If the original curative instruments are retained by the title company, true copies will be transmitted with the

Final Title Assembly to HQDA (DAEN-REA-P) WASH DC 20314.

(b) *Intermediate certificates or interim binders.* In the following types of cases, it may be necessary, after examination of the preliminary certificates of title or interim binder, to obtain intermediate certificates of title or interim binders in order to perfect title prior to closing the transaction:

(1) When the signer of the offer is not the record title holder but is the holder of a contract for purchase, recorded or unrecorded, the preliminary certificate of title or interim binder will show title in the record title holder. In such cases, the certificate or binder will make appropriate reference to the contract. It will recite the action necessary to complete the contract and effect transfer of title from the record holder to the contract purchaser. When the deed to the contract purchaser is recorded, an intermediate certificate of title or interim binder, in proper form, will be obtained.

(2) In those cases in which record title is vested in a deceased person, the preliminary certificate of title or interim binder may be issued in the name of the deceased record owner, followed by the word ''deceased,'' and will be accompanied by a letter from the title company stating whether a judicial proceeding will be required, or whether affidavits of heirship, or other forms of proof, will suffice to permit the issuance of intermediate certificate or binder showing title vested in the heirs of the deceased.

(i) Where a judicial proceeding is required, action will immediately be taken by the owners to perfect title by such proceeding, and, upon completion, an intermediate certificate of title or interim binder should be obtained. If such action cannot be completed within 60 days, action will be taken to acquire the tract by condemnation, § 644.72(a).

(ii) Where a judicial proceeding is not required, it will be necessary to effect the necessary curative action and obtain an intermediate certificate or interim binder showing title in the heirs of the deceased record owners.

(3) In those cases in which conveyance to the United States is to be made by a fiduciary, a corporation, a political subdivision, or an unincorporated association, the certificate of title or interim binder will state whether the proposed grantor has legal authority to convey valid title to the United States, and, if so, will cite the source of the authority. If the preliminary certificate of title or interim binder does not so indicate, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder.

(4) Where the certificate of title or interim binder contains any objection, or reference to liens of taxes, assessments, bonds, or other indebtedness of a road improvement, school, drainage, or other type of special improvement district, the specifications provide that the certificate or interim binder will also contain reference to the statute or statutes, under which the district was created, its bonds issued, and its taxes levied; the amount of taxes and assessments levied and bonds issued; and other additional pertinent information. If the preliminary certificate or interim binder does not contain sufficient information to enable an examining attorney to determine the nature and extent of the lien, if any, on the land, of such taxes, assessments and bonds, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder. If the preliminary certificate or interim binder does not clearly indicate that the bonds or taxes of such district become a lien annually at the same time as the lien of ad valorem taxes attaches to land in the State and that the lien is of the same nature as the lien of ad valorem taxes, the information specified above must be obtained and a determination must be made as to the nature and extent of the liens of such bonds and taxes.

(5) Where the certificate of title or interim binder discloses a covenant or condition restricting the use of the land, the certificate or interim binder will set forth the restriction, will quote the provision imposing the restriction or creating the right of reverter for a breach thereof, and will state whether a release will eliminate the objection. If such information is not contained in the preliminary certificate of title or interim binder, it will be returned to

the title company for correction or for issuance of an intermediate certificate of title or interim binder. If a release will eliminate the objection, action will be taken to obtain an appropriate release from the person or persons holding the right of reverter. Should the title company hold that the title cannot be perfected by a release or if an acceptable release cannot be obtained, action will be taken to acquire the tract by condemnation.

(6) When the specifications require the title company to include any of the above information in the preliminary certificate of title or interim binder and it is necessary to obtain an intermediate certificate of title or interim binder due to the omission of such information from the preliminary report by the title company, the intermediate certificate of title or interim binder will be furnished without cost to the United States.

(c) *Question of law.* Any difficult or complicated question of law raised by an objection or exception in a preliminary or intermediate certificate of title or interim binder should be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for review and transmittal to the Attorney General for an opinion. The letter of submittal shall contain a full statement of the facts and references to the provisions of applicable statutes and pertinent decisions of state courts on the question involved. This action should be taken before closing. This action should also be taken on questions involving the nature and extent of the liens of bonded indebtedness, assessments, or taxes to meet the bonded indebtedness of special improvement districts, or relating to restrictive covenants.

### § 644.69 Title Clearance—Easements.

(a) *Easements Costing in Excess of $1,000.* Curative action and clearance of title to easements costing in excess of $1,000 will be the same as in fee acquisitions, as outlined above, except as follows:

(1) Under an agreement with the Department of Justice, title to easements will be approved subject to outstanding encumbrances, such as mortgages, deeds of trust, judgments, and vendors' liens, where the tract is not encumbered in excess of 50 percent of the reasonable value of the remaining property, and the consideration being paid for the easement does not represent a sum in excess of ten percent of the value of the remaining property. (As to taxes, see § 644.70(k)(6).)

(2) For the purpose of making the determinations necessary to apply the formula set forth in paragraph (a)(1) of this section, resort may be had to the tract appraisal, provided it is based on a ''before and after'' approach, in which case the amount of the ''after'' appraisal will be used as the reasonable value of the remaining property. In the event no such appraisal has been made, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained. Determination of the total encumbrances may be made on the basis of the face of the encumbering instruments. However, if it is necessary to determine that the total amount of the outstanding liens as of the date of closing has been reduced to an amount less than 50 percent of the reasonable value of the remaining property, such reduction must be evidenced by signed statements from the lienees or their authorized representatives. The appraisal or memorandum estimate and the lienee statements will be placed in the tract file.

(3) On the basis of the determinations described in paragraph (a)(2) of this section, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances, which will be signed by the closing agent. The original will appear as a separate document in the Final Title Assembly submitted to HQDA (DAEN-REA-P) WASH DC 20314.

(b) *Easements Costing Not in Excess of $1,000.* (1) Requirements for the release or subordination to such easements of mortgages, deeds of trust, judgments, vendors' liens, taxes which are a lien, whether or not presently due and payable, and similar encumbrances will ordinarily be the same as for easements costing in excess of $1,000.

(2) In unusual circumstances, these requirements need not be applied if the purchase price of the easement is insufficient to satisfy the liens and interest, or the amount of such liens or interest is small in comparision with the value

of the land in which the easement is being acquired, and in comparison with the cost of condemnation proceedings to clear the title. In such cases, the Division or District Engineer (or the Chief, Real Estate Division, if delegated such authority) may waive such title infirmities as he determines will not interfere with the use of the easement by the Government or jeopardize the interests of the United States: *Provided:*

(i) The easement deed contains a general warranty covenant by the grantor to satisfy all such unpaid taxes and other liens and to warrant the title against any encumbrances or interests left outstanding.

(ii) The Division or District Engineer (or the Chief, Real Estate Division, if delegated the authority) has determined that such outstanding liens, encumbrances, or interest, if left outstanding, will not interfere with the Government's use of the easement, or will not jeopardize the interests of the United States, and in his opinion the title is sufficient. A certificate to this effect should be attached to the Final Title Assembly.

(c) *Curative action.* (1) Curative action will be initiated promptly in all cases to eliminate all title defects or encumbrances, except those which may be administratively waived, those which may be eliminated by the payment of money and cleared at the time of closing, and those which may be waived as hereinafter provided. Curative material need not be recorded, however, until the closing of the transaction.

(2) All encumbrances, defects, outstanding interests, and other matters shown in the preliminary certificates of title or interim binders, must be cured and eliminated before delivery of the purchase check, except those of a nature which have been waived as not interfering with the Government's use of the easement or as not jeopardizing the interest of the United States.

### § 644.70 Closing of cases.

(a) *Closing and Settlement Officers.* Payment and closing of cases will be initiated immediately upon completion of curative action, by qualified Closing Officers employed by the Corps of Engineers. To be qualified, a Closing Officer must be employed in the Real Estate Division of a Division or District Office, or in a Real Estate Project or Suboffice, in an Attorney-Advisor position, or in a Realty Officer position if he is a member in good standing of the Bar of a State, Possession, or the District of Columbia, and has been instructed in Federal procedure and in the requirements for closing land acquisition transactions by a Division or District Closing Officer and has been approved by the Division or District Engineer to close land acquisition transactions independently. It is no longer necessary for Closing Officers to be individually bonded. Contracting for closing services will require prior approval of HQDA (DAEN-REA-P).

(b) *Payment.* Payment for land, or interests therein, will be made from funds available to the Division or District Engineer.

(c) *General.* The details of the closing necessarily differ according to the number of vendors and the outstanding interests, the number and variety of the encumbrances and title objections to be met, and miscellaneous other details resulting from complications in the particular title. Upon receipt of the check and title papers, the Closing Officer will review the entire file relating to the acquisition, fully acquaint himself with the terms and conditions of the sale, and with the condition of the title, and will ascertain whether there are any special conditions to be performed, or requirements to be met, on the part of the landowner or the Government and what objections to the title are to be eliminated before valid title may vest in the United States.

(d) *Curative data.* The Closing Officer will determine the character and amount of all outstanding interests in, liens on, or claims against the land, which are to be satisfied out of the purchase price, and see that necessary curative action has been taken and curative data obtained to cure all defects in and meet all objections to the title. If the title evidence consists of a certificate of title of a title company, or a title guarantee policy, approval of the curative material, obtained to eliminate the title objections, must be obtained from the title company.

(e) *Continuation of title search.* The Closing Officer will satisfy himself that no change has occurred in the land records from the date of the prior certification which will adversely affect the title to the real estate interest being acquired by the United States. Where deemed appropriate because of the complexities of the title, the amount of the purchase price, or other reason, the local representative of the title company or the abstracter will be requested to examine the title records for the purpose of making this determination, and a continuation of the title evidence should be obtained, if considered necessary. Otherwise, the interim title search may be made by the Closing Officer.

(1) If no adverse change in the status of title has occurred since the date of the preliminary or the latest certification of the title by the abstracter or the title company, as the case may be, the Closing Officer will proceed to close the case.

(2) In case of change in ownership during the period, the Closing Officer will order a continuation of the abstract or an intermediate certificate of title or interim binder, as the case may be, and take such action as necessary to cure the title.

(f) *Payment and Closing Sheet.* ENG Form 1566, Payment and Closing Sheet and Receipt for United States Treasurer's Check, covering all charges to be eliminated by payment of money to be deducted from the purchase money check, will be prepared in advance of closing. This sheet will show, in detail, all disbursements of the purchase money, including all amounts to be expended for satisfaction of:

(1) Taxes and assessments.

(2) Outstanding judgments—State and Federal.

(3) Mortgages, deeds of trust, and other liens.

(4) Amounts received under any contract or bond.

(5) Landowner's balance after all charges are deducted from the purchase price.

(g) *Division or District inspection of premises.* The Closing Officer or other authorized Division or District employee will personally make an inspection of the premises to ascertain whether any person is occupying the property in whole or in part.

(1) The Closing Officer or an authorized Division or District employee will prepare ENG Form 798, Certificate of Inspection and Possession.

(2) If any person other than the vendor is found in possession, the Closing Officer will secure a disclaimer on ENG Form 1290, Disclaimer. The disclaimer will be modified to make allowance of any provision in the offer to sell permitting possession after closing.

(3) The Closing Officer or an authorized Division or District employee will check to determine that the buildings, improvements, and crops listed on the appraisal report are still on the land being conveyed. Where buildings, improvements, and crops have been reserved by the landowner, it will be determined that only the items reserved have been removed. Whenever possession of land is surrendered to the Government before the time of payment and closing, and immediate inspection and report ENG Form 1567, Report on Vacation of Property, will have been made. The Closing Officer may rely upon this report for the inspection required in the first part of this paragraph unless he is aware of circumstances which would make a supplemental inspection and report proper. If no such inspection and report have been made and possession has been surrendered to the Government, the inspection and report must be made at this time.

(4) The Closing Officer or an authorized Division or District employee will determine whether there have been repairs or improvements to or construction on the premises which might give rise to mechanics liens.

(5) The ENG Form 798 will be executed and placed with the title papers. If executed by an employee other than the Project Manager or Closing Officer, it must be approved by the Project Manager or Closing Officer, to indicate that the Project Manager or Closing Officer has authorized the employee signing the certificate to make the inspection and is satisfied it has been properly done.

(h) *Deed to the United States.* (1) The deed to the United States will be drafted in accordance with the ''Standards

for the Preparation of Title Evidence in Land Acquisition by the United States,'' issued by the Department of Justice in 1970.

(2) Where the landowner's name appears in various forms among the title papers, full use will be made of the ''also known as'' clause in identifying the grantor in the deed to the United States.

(3) The deed shall contain a quitclaim clause by which the grantor quitclaims to the United States all right, title, and interest which the grantor may have in the banks, beds, and waters of any streams bordering the said land to be conveyed, and also all interest in alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land and in any means of ingress or egress appurtenant thereto.

(4) Recording fees, transfer taxes, and similar expenses incidental to conveying real property to the United States; penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier, shall be paid by the Government pursuant to authority of section 303, Pub. L. 91–646, approved January 2, 1971.

(i) *Satisfaction of liens and encumbrances.* All mortgages, deeds of trust, judgments, mechanics liens, and similar encumbrances will be satisfied and released or discharged of record. In the acquisition of easements, liens and encumbrances should be satisfied, released or subordinated to the Government's easement, except as provided in § 644.69(a) or unless administratively waived under § 644.69(c).

(j) *Payments to tenants and lessees.* Amounts due lessees, or other tenants, under ENG Form 1564, Consent to Offer to Sell, will be paid from the purchase price or by the landowner direct. In either case, proper receipts and releases will be obtained.

(k) *Satisfaction and release of liens of taxes and assessments.* (1) Except as provided in § 644.69(b) and paragraph (k)(6) of this section, all taxes and assessments which, under the law of the State where the land is located, are a lien on the property as of the date of the delivery and recordation of the deed to the United States must be paid at or before closing, unless provision for their payment is made as follows:

(i) Where closing takes place before the completion of the assessment and levy of the taxes necessary to the determination of the amount of the taxes, or before the taxes are due and payable, a sufficient sum will be withheld from the purchase price to satisfy such taxes when the amount is later determined or they later become due and payable. In cases where the amount of taxes has not been determined, an estimate will be made, after consultation with the assessor and consideration of the amount of taxes paid on the land for the preceding year. The amount withheld should be at least 20 percent in excess of the amount of taxes assessed against the property for the preceding year.

(ii) If the taxes are not due and payable under State law, though the amount has been determined at the time of closing, payment will not be made to the collector or other official charged with the collection of taxes, unless he has authority to accept payment and receipt for them in advance of the due date.

(2) Funds withheld for the payment of taxes will be transmitted promptly to the Division or District Engineer in the form of cashier's check or money order payable to the Treasurer of the United States, unless the taxes are paid or held in escrow by the title company. The Closing Officer, in transmitting such payments, must clearly identify, by name, the vendor from whom the tax money was withheld, and must identify the land for which the taxes were withheld by its tract number in the project. He must also identify the taxes for payment of which the money has been withheld by specifying the type of taxes, such as county, city, or school. He will set forth the year each became or becomes due and fully explain the manner in which payment or withholding has been handled in order that proper payment will be effected by the Division or District Engineer when

the taxes are due and payable. Any balance of the amount withheld and not needed to satisfy the taxes will be refunded to the grantor.

(3) Where payment of the taxes is not possible at the time of closing and funds are withheld for this purpose, the Closing Officer will immediately notify the local tax official that title to the particular tract has been conveyed to the United States and that funds have been withheld for the payment of taxes, specifying the taxes for which an amount has been withheld and stating that such funds are in the custody of the Division or District Engineer. In giving such notice, he will use ENG Form 894, Notice to Tax Official.

(4) When the taxes become due and payable, the Division or District Engineer will pay such taxes from the funds withheld from the purchase price. Any excess between the amount of taxes actually paid and the amount withheld will be refunded to the grantor by the Division or District Engineer. Refund checks will be transmitted to the grantor only after it has been definitely determined that all taxes which were liens on the tract are shown as satisfied on the books of the tax collector. This is necessary to avoid the possibility of a refund being made before satisfaction of all tax liens. The tax receipt should be forwarded to HQDA (DAEN-REP-S) WASH DC 20314 for filing with the original title papers.

(5) Where the evidence of title consists of certificates of title or title insurance, and funds are withheld for payment of taxes, the amount so withheld may be turned over to the title company, provided:

(i) The title company is financially responsible and will agree to issue a final certificate of title or title policy in which no tax liens or unpaid taxes will be noted or, if noted, will be followed by the statement:

> For the payment of which provision has been made by deposit of a sufficient sum with this company.

(ii) The title company will enter into an escrow agreement with the grantor to hold such sum for the satisfaction of the taxes when they become due, and to return to the grantor any excess remaining after their payment.

(6) Agreements have been reached with the Department of Justice that, in the acquisition of easements, the following will apply:

(i) No provision need be made for the payment of taxes which are a lien but are not due and payable, provided that the purchase price of the easement, including severance damage, is not in excess of 50 percent of the reasonable value of the entire contiguous property of the vendor. In the event the value of the easement has been determined by a ''before and after'' appraisal, the amount of the ''after'' appraisal will be utilized in making the necessary determination. In the event no such appraisal has been made, it will not be necessary to prepare a complete appraisal of the value of the contiguous property. In lieu thereof, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained and placed in the tract file. In either case, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances.

(ii) It will not be necessary to withhold funds for payment of current taxes which are due and payable, if the purchase price of the easement is insufficient to pay such taxes. In such case, Item 4 of ENG Form 3536 and the third block of that form will be completed.

(iii) ENG Form 3536 will be signed by the Closing Officer and the original will appear as a separate document in the Final Title Assembly.

(l) *Payment and Recordation of Deed.* (1) No disbursement of the purchase price shall be made until:

(i) A duly executed deed has been accepted;

(ii) All outstanding charges, liens, or encumbrances on the land have been satisfied and discharged, or a sufficient sum has been withheld from the purchase price to satisfy and discharge such charges, liens and encumbrances; and

(iii) The title is sufficient for the purposes for which it is being acquired, and all objections thereto have been eliminated or administratively waived in writing.

(2) When the requirements of paragraph (l)(i) of this section have been satisfied, the balance of the purchase

price shall be delivered to the landowners.

(3) The deed and all instruments which release liens or encumbrances on the property shall be promptly recorded.

(m) *Closing of easements acquisitions*—(1) *Easement costing in excess of $1,000.* Closing requirements and procedures with respect to easements costing in excess of $1,000 are the same as in fee acquisitions, except as to mortgages, deeds of trust, judgments, vendors' liens, and similar title infirmities (§ 644.69(a)), and as to taxes which are liens but which are not due and payable (paragraph (k)(6) of this section).

(2) *Easements costing not in excess of $1,000.* Closing requirements and procedures with respect to easements costing not in excess of $1,000 are the same as a fee acquisition except that title infirmities may be waived as provided in § 644.69(b).

(n) *Payment and closing under power of attorney.* Where the landowner is unable or unwilling to be present personally or to pay from his own funds the amount necessary to satisfy all encumbrances and expenses, the following steps may be taken:

(1) Obtain a power of attorney from the landowner. Standard Form 232, Power of Attorney by Individual for the Collection of a Specified Check Drawn on the United States Treasury, will be used. If the landowner is a corporation, Standard Form 236, Power of Attorney by a Corporation for the Collection of a Specified Check Drawn on the Treasurer of the United States, and Standard Form 237, Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States, will be used. The power of attorney will be drawn in favor of the Closing Officer making the payment and closing. Immediately after the post office address of the Closing Officer, the following will be inserted, ''Agent for the Disbursing Officer.'' This insertion must be initialed by the person(s) executing the power of attorney. (Above forms are available through the local GSA Regional Office.)

(2) Obtain from the landowner ENG Form 1569, Order to Disburse Under Power of Attorney. It will be noted that this form specifically recites types of indebtedness or expense, the names of the persons to be paid under the power of attorney, and the estimated, but not necessarily the exact, amounts thereof. It is important that all items (including cost of revenue stamps, recordation fees for curative material, and bank service charges) be itemized on the form.

(3) The Closing Officer then will take the necessary action for and on behalf of the landowner to discharge the indebtedness and pay expenses under the ENG Form 1569.

(4) If it is possible to have all interested parties, other than the landowner, present at one time and to make all payments simultaneously, a round table closing will be conducted. The Closing Officer, under the power of attorney and order to disburse, will endorse and cash the Treasurer's check and will make the individual disbursements in actual cash.

(5) If it is possible to determine definitely all items of payment simultaneously, but it is not possible to have all interested parties present at one time, the Closing Officer will, under the power of attorney and order to disburse, endorse and cash the Treasurer's check, obtain separate cashier's checks for all items of payment (including the bank services charge for the issuance of such checks), and deliver the checks.

(6) Where it is not possible to determine definitely all items of payment simultaneously, the Closing Officer, under power of attorney and order to disburse, will endorse and cash the Treasurer's check and will obtain separate cashier's checks for all items of payment for which disbursements may be properly made and for any balance representing the total of any items, the amounts of which cannot be definitely determined; in other words, for the residue of the amount of the United States Treasurer's check. In every instance, the cashier's checks will be drawn to provide for endorsement by the Closing Officer or landowner as later determined to be appropriate.

(7) Curative material which requires recordation will be recorded for and on behalf of the landowner and will then be placed with the title papers.

(8) The usual tax receipts, mortgage releases, judgment satisfactions, etc., will be obtained for each monetary encumbrance which has been discharged. These instruments will be placed with the title papers, unless the landowner wishes to retain them.

(9) Separate receipts on ENG Form 1571, Receipt for Payment Under Power of Attorney, must be obtained for each disbursement made under the power of attorney and order to disburse, including a receipt for the balance of the purchase price paid to the landowner. One copy of such receipt will be placed in the project files.

(10) The Closing Officer will prepare an original and two copies of ENG Form 1570, Report of Disbursement Under Power of Attorney, showing the exact amount of each disbursement made under the power of attorney and order to disburse. The Closing Officer will prepare an original and two copies of appropriate certification thereon. The original and two copies will be signed by the landowner, who will retain one copy. The Closing Officer will place one copy in the files of the project office and will place the original with the title papers. The separate receipts on ENG Form 1571 for each disbursement made will be attached to the original ENG Form 1570.

(o) *Procurement of check.* (1) After acceptance and distribution of the offer assembly and the acquisition is ready for closing, the following instruments and supporting data will be transmitted to the Finance and Accounting Officer for scheduling of SF 1166, Voucher and Schedule of Payments, and issuance of check:

(i) Two true copies of the preliminary opinion of the Attorney General, where required; or

(ii) Two true copies of a preliminary certificate of title or title guarantee policy where the preliminary opinion of the Attorney General is not required; or

(iii) Two copies of ENG Form 909, Attorney's Preliminary Certificate of Title, in easements acquisition which cost less than $1,000; and

(iv) Two true copies of other supporting data evidencing amount due and payable, such as statement of closing attorney; and

(v) Two true copies of the offer assembly or deed executed by the vendor, if offer form has not been utilized.

(2) The following statement, appropriately modified, signed by the Chief, Real Estate Division, may be transmitted in lieu of the above listed certificates:

> I certify that the check requested hereby is to pay an obligation of the United States as reflected on the attached (Offer to Sell) (easement or deed). I further certify that the parties signatory to this document and shown on the voucher as payees are the same parties reflected in a preliminary certificate of title issued by the _____ Title Company in the possession of the Real Estate Division of this office. The completion of the transaction will be in accordance with existing regulations pertaining to the closing of real estate acquisitions.

The landowner's signature on a voucher is not necessary. On payments involving civil funds, paragraph 3–7g, ER 37–2–10, will be followed.

(p) *Procedure after payment.* When the above closing requirements have been met, the Closing Officer will:

(1) Immediately order a final continuation of the type of title evidence which has been contracted for. The final title evidence must be dated as of the date of recordation of the deed to the United States, or a subsequent date, to show a valid title vested in the United States of America subject only to those title defects which have been administratively waived or to those liens and encumbrances for which sufficient funds were withheld from the purchase price to satisfy and discharge them.

(2) Check carefully ENG Form 1566, Payment and Closing Sheet and Receipt for United States Treasurer's Check, to see that funds have been properly disbursed.

(3) Review the continued abstract, final certificate of title, or title insurance policy, as soon as they are prepared and determine that the proper preliminary and final title evidence and related papers on the case have been completed in proper order. Thereupon a Final Title Opinion will be prepared.

(4) Transmit as the Final Title Assembly to HQDA (DAEN-REA-P) WASH DC 20314, the Final Title Opinion, title

evidence and related papers. This Final Title Assembly must be chronologically arranged and securely fastened for permanent filing, and should include the following:

(i) Abstract of title, properly continued through time of closing; or preliminary, intermediate, and original of final certificate of title; or interim binder and original of the Title Guarantee (Insurance) Policy.

(ii) Curative instruments and material pertaining to title defects appearing in the abstract, the final certificate of title, or the title guarantee or insurance policy.

(iii) Deed to the United States, executed, stamped, acknowledged, and recorded.

(iv) Copy of the accepted offer to sell (ENG Form 42 or ENG Form 2970).

(v) Completed ENG Form 798.

(vi) Completed ENG Form 1566.

(vii) Statement regarding payment of taxes or amount withheld to pay the taxes.

(viii) Where required, completed ENG Form 1290.

(ix) If the power of attorney procedure is followed, power of attorney on proper Department of the Treasury Form and completed ENG Forms 1569 and 1571.

(x) Certified copy of any waiver letter or certificate.

(xi) Any other papers relating to the title or closing of the case.

(xii) An additional copy of the deed and the Attorney's Final Title Opinion for review by the Attorney General.

(5) A copy of the executed and recorded deed will be retained by the Division or District Engineer for the project files.

(6) Similar action will be taken by the Closing Officer in acquisition of easements costing not in excess of $1,000.

### § 644.71 Final title assembly.

(a) *Disposition of final title assemblies.* The final title opinion and related papers will be forwarded to HQDA (DAEN-REA-P) WASH DC 20314 for review and disposition. In addition, copies of deeds and related papers in acquisitions for the Strategic Petroleum Reserve Program of the Department of Energy will be forwarded to: Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, Louisiana 70123.

(b) *Division/District files.* True copies will be retained for Division or District files.

### § 644.72 Transfer to condemnation.

(a) *Transfer of tracts from purchase to condemnation.* If at any time, in the course of acquisition by purchase, it becomes apparent that title clearance and closing cannot be completed within 60 days of the offer to sell, action will immediately be taken to acquire the land by condemnation in order to make funds available to the landowner.

(b) *Contents of letter of submittal.* In such cases the letter of submittal will contain or be accompanied by:

(1) All title evidence.

(2) An analysis of the title defects and a statement of the attempts which have been made to cure the defects.

(3) A statement of the attempts to have the title infirmities waived by the title company and the reasons for refusal; or

(4) The curative material which has been obtained to remedy the infirmities; and

(5) Two copies of the offer to sell from the apparent owners.

## ACQUISITION BY PURCHASE, DONATION, AND TRANSFER

### § 644.81 General.

Sections 644.81 through 644.88 describe the procedures of the Corps of Engineers relating to the acquisition of land and interests therein for both military and civil works projects by purchase, donation and transfer.

(a) *Applicability.* These sections are applicable to all Division and District Engineers having real estate responsibilities.

(b) *Acquisition authority*—(1) *Limitation.* Acquisition of land for use by the United States requires express authorization (10 U.S.C. 2676, 41 U.S.C. 14).

(2) *Military.* Title 10 U.S.C. 2571 authorizes transfer of real property between Defense elements without compensation if the Secretaries approve. Title 10 U.S.C. 2662 provides that acquisition of fee title or transfer of real

property owned by the United States to another Federal agency, military department or a state must be reported to the Committees on Armed Services of the Senate and House of Representatives if the estimated value is more than $50,000 and the transaction may not be consummated until after 30 days have expired from the date the report is submitted to the Committees. Title 10 U.S.C. 2663 provides for acquisition by the Secretary of a military department during time of war or when war is imminent of any interest in land, including temporary use, required for a Defense installation, munitions plant or power plant for production of munitions, through negotiation and purchase, by condemnation or by gift. Title 10 U.S.C. 2672 provides that the Secretary of a military department may acquire any interest in land, including temporary use, by gift, purchase, exchange of United States owned land or otherwise, that he or his designee determines is needed in the interest of national defense and does not cost more than $50,000 exclusive of administrative costs or the amounts of deficiency judgments.

(3) *Civil works.* Acquisition of real property for civil works projects for which provision has been made by law is authorized in 33 U.S.C. 591–595a and 701. As in the case of military projects, the Secretary of the Army is also authorized to accept donations of lands and materials required for civil works projects.

(c) *Rights-of-entry.* Rights-of-entry for construction may be obtained by the Division or District Engineer, after he has been authorized by the Chief of Engineers to acquire the land, pending completion of acquisition by purchase or the filing of condemnation proceedings with declaration of taking. In the event the landowner will not voluntarily grant a right-of-entry, an appraisal of the required interest should be made and negotiations conducted on the basis thereof. If the negotiations are not successful, a declaration of taking should be submitted to acquire the necessary rights. The same procedure will be used for acquiring rights-of-entry for other purposes, such as survey and exploration.

### § 644.82 Prerequisites to acquisition.

(a) *Authority to begin acquisition.* Action to acquire a tract of land will not be initiated until the Real Estate Design Memorandum (for all projects except military) or Real Estate Planning Report (for Army, other than Civil Works, and Air Force projects) is approved and specific authorization of the Chief of Engineers, or the appropriate Air Force Regional Civil Engineer (AFRCE), to proceed with the acquisition of the project is received by the Division and District Engineer and funds have been made available. Upon such approval, the Division or District Engineer is authorized to initiate action for the acquisition of the estate approved for the particular project in accordance with the procedures hereinafter set forth.

(b) *Tract description.* Authority to initiate engineering planning of a project will state the mapping procedures provided for in Chapter 3, ER 405–1–12. It is necessary that land requirements be determined, that the various tracts be identified by ownership, and that accurate tract descriptions be developed. Tract ownership data may be developed by Division or District personnel from the local land records or procured by contract from a qualified local Government official, abstractor or title company representative.

(c) *Title evidence.* With approval to proceed with acquisition, title evidence contracts can be initiated. The procedures for obtaining title evidence are covered in §§ 644.61 through 644.72. Preliminary title evidence to confirm ownership and status of the title is prerequisite to negotiating for acquisition of the land or interests therein.

(d) *Appraisals.* Concurrently with the procurement of title evidence, the appraisal of the land should begin. The appraisal, when approved, forms the basis for the determination of fair market value which will not be less than the approved appraised value. The appraisal procedures are covered in subpart B. Normally, one appraisal per tract (ownership) will be obtained; however, in unusual cases such as those which involve novel, unique or controversial appraisal concepts, there is no objection to obtaining more than one appraisal covering the same tract

if considered advisable by the Division or District Engineer. When fee tracts are acquired by eminent domain procedures, where the value of the property is between $50,000 and $100,000, only one appraisal need be provided to the Department of Justice so long as it is a contract appraisal; two appraisals will be provided for values exceeding $100,000. Easement tracts acquired by eminent domain procedures, in excess of $50,000, will require two appraisals. At least one of the two appraisals must be made by a contract appraiser. Generally, in these cases, the second appraisal is procured only after negotiations indicate that agreement on price cannot be reached and that acquisition by condemnation will be required. The second appraisal will be procured in order that the Corps can take advantage of any negotiating flexibility that the second appraisal may afford in order to preclude court action. It is also necessary that the appraisals be relatively current in point of time (not to exceed six months) since dependent upon the real estate activity and degree of stability of the local economy, significant changes may take place in relatively short periods of time.

(e) *Environmental considerations.* Paragraph D3, Attachment 1 to Enclosure 1, DOD Directive 6050.1, dated March 19, 1974, subject: ''Environmental Considerations in DOD Actions,'' requires close environmental scrutiny of real estate acquisitions, disposals and outgrants to determine if said actions constitute a ''Major Action Significantly Affecting the Quality of the Human Environment (MASAQHE).'' If the action is determined to be a MASAQHE, then an environmental impact statement is required. Paragraph D3 is quoted here for ready reference:

D. Certain types of actions require close environmental scrutiny because of the possibility that they may either affect the quality of the environment or create environmental controversy. It may be desirable in such cases to have a complete presentation of the environmental aspects of the proposed action available for any interested party. For these reasons, consideration shall be given to documenting the environmental effect of the following types of actions in writing: (The written environmental assessment need not be elaborate for actions in which it is readily determinable that the impact would not be significant; however, negative declarations must be supported by written environmental assessments which generally meet the EIS format requirements.)

* * * * *

3. Real estate acquisition, disposal and outgrants.

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### § 644.83 Negotiations.

(a) *Acquisition objectives.* The objective of a land acquisition program is to acquire land at a price that will afford each landowner his constitutional guarantee of ''just compensation'' as that term has been defined by Federal judicial decisions. The Government must never pay less than just compensation unless a gift is intended. In eminent domain proceedings, the just compensation due a landowner is determined judicially by court award or by settlement prior to trial; in a purchase case, it is determined by negotiations leading to a satisfactory price and agreement with the landowner. While it is recognized that an appraisal is only an informed opinion and does not establish or determine just compensation, it is also recognized that, in negotiating for the purchase of land, an appraisal is the best and sometimes the only reliable opinion of the market value of the land which is supported by a thorough, acceptable analysis of market conditions at the time of purchase. Therefore, in the negotiation for the purchase of land, an approved current appraisal shall establish the minimum price to be paid for the land being acquired by the Corps of Engineers. Negotiations or offers below this price are prohibited except where the property is being acquired on a competitive basis and condemnation is not authorized.

(b) *Negotiating objectives.* In all cases, it is important that the negotiator receives adequate guidelines and explicit instructions. Promptly, after the amount of the estimated just compensation is established, the negotiator shall make an initial offer in the full amount of the fair market value, shall advise the landowner that the land was appraised for such amount, and shall furnish the landowner a written statement of, and summary of the basis for,

said amount. A concentrated effort will be made to acquire the land for that amount. This written statement will be in the form of a letter which may be delivered personally or by first class mail. Such summary will include, as a minimum, the following items:

(1) Definition of the term ''fair market value.''

(2) An accurate legal description and location identification of the real property and the interest(s) therein to be acquired (legal description and estate may be attached).

(3) The amount of the offer and a statement that such amount:

(i) Is the amount believed by the agency to be just compensation for the property;

(ii) Is not less than the approved appraisal of the fair market value of the property;

(iii) Disregards any increase or decrease in the fair market value caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner;

(iv) Does not reflect any consideration of or allowance for any relocation assistance and payments which the owner is entitled to receive.

(4) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the real property for which the offer of just compensation is made. The inventory shall include a statement of the utility and condition of said buildings, structures, fixtures, and other improvements.

(5) A description of the appraisal technique used, *i.e.*, market approach, income approach, or cost approach, in sufficient detail to explain clearly to the landowner the process by which his property was valued. Thus, as an illustration, where the market approach was used, the explanation should include the number of comparable sales used, their general location and type, the factors considered in adjusting sales of subject property, and any other information which would help the landowner understand what was done to value his property. A statement that comparable sales of similar properties were examined without more explanation is not sufficient. Similar information should be given when any other appraisal technique is used. Unusual cases will require a more detailed explanation.

(6) An identification of land classification categories (do not show acreage breakdown).

(7) If only a portion of a property is to be acquired, an apportionment of the total estimated just compansation for the partial acquisition between:

(i) The amount representing the just compensation for the real property to be acquired;

(ii) The amount, if any, representing severance damages to the remainder, together with a brief narrative description of the cause thereof; and

(iii) In the event ''off-setting benefits'' are involved, these must be shown, along with a narrative explanation and the landowner shall be given a ''person-to-person'' explanation by the negotiator.

(8) If the property contain a dwelling, the value of said dwelling and homesite shall be set forth separately, with the statement that this figure will be used in calculating housing relocation benefits under title II of Pub. L. 91–646.

(9) If any building, structure, fixture, or other improvement, comprising part of the real property, has been identified as being owned by a tenant who has the right or obligation to remove it at the expiration of his term, the amount of the value of such building, structure, fixture, or other improvement, being the greater of:

(i) The amount which the tenant's improvement contributes to the fair market value of the real property to be acquired; or

(ii) The fair market value of the tenant's improvement for removal from the real property. The basis of such amount shall be included.

(c) Appraisal reports or the appraiser's analysis (complete breakdown of principal value elements) will not be revealed by the negotiator unless specifically authorized. Cases involving property for which the highest and best use cannot be definitely established, and to which the exceptions mentioned

in paragraph (a) of this section do not apply, will be reported to HQDA (DAEN-REA) WASH DC 20314 for specific instructions. If the land is being donated, initial offers are not necessary, and the appraisal will be significant in negotiations only when considering the conditions under which the donation is made as, for example, an agreed valuation for tax purposes. Negotiations will be based on current market values, which normally means that last offers will be based on appraisals not over six months old. Exceptions will be required in instances of rapid escalation of values when the appraisal is quickly outdated or in instances of a relatively static market or other condition resulting in a minimal change in property values. In such cases an explanation will be necessary.

(d) *Exceptions*—(1) *Corps Employees.* If an employee of the Corps of Engineers has a direct interest in a tract of land being acquired by the Corps for public use, the tract will be acquired by condemnation. In cases of this nature, appraisal reports should be prepared, reviewed and forwarded together with a declaration of taking, with the condemnation assembly. The negotiator's report, of course, will not be included. The Department of Justice will be requested to handle all further matters pertaining to settlement or trial of the case. The Department of Justice has agreed to accept full responsibility for negotiations and approval of settlements or awards in such cases, without contacting any Corps personnel other than the owner of the interests being acquired.

(2) *Members of Congress.* Since, under 18 U.S.C. 431 and 432, members of Congress who hold interests in land that is required for project purposes cannot contract for sale of such interests to the Government, these interests will also be acquired by condemnation. Negotiations for acquisition by purchase or for settlement without trial cannot be conducted by officers or agents of the United States. The determination of just compensation must be made by judicial proceedings. Appraisal reports and the condemnation assembly should be prepared and forwarded as set forth in paragraph (d)(1) of this section.

(e) *Negotiating guidelines.* (1) The negotiator should be thoroughly familiar with the Division and District negotiating guidelines and should study the background data of the project, consisting of the authorizing act, survey report, project document, design memoranda, etc.; the applicable appraisal reports; tract ownership data; preliminary title certificates; and other related material. He should be entirely familiar with the project and the owner's individual property before initiating negotiations.

(2) The owner shall be provided with available brochures which explain the project and the Pub. L. 91–646 benefits, together with the written statement and summary required by §644.83(b). The negotiator should explain to the landowner the Government's requirement for the land, the amount of land required, the estate(s) to be acquired, the terms and conditions of the Government's contract form, and the fact that relocation assistance benefits may be available. He should furnish the landowner a copy of a map indicating the boundaries of that portion of his land to be acquired, where the entire ownership is not being acquired or where different estates are being acquired in the same ownership, specifying the estate in each area.

(3) Negotiations will be continued in an effort to obtain acceptance of the Government's offer or a reasonable counteroffer from the landowner, or until it is definitely determined that such a counteroffer will not be forthcoming. It is not intended that negotiations be continued until an unacceptable counteroffer is finally obtained. However, in an effort to obtain a reasonable counteroffer above the Government's estimate, the negotiator will, if necessary, take the initiative in suggesting a series of prices within a range which, in accord with the guidelines discussed in §644.84, has been predetermined to be reasonable.

(4) The interest of both owners and tenants must be considered and protected. The tenant is a proper party to the transaction, and every effort must be made to obtain the consent of the landowner and tenant as to the price to be paid to the tenant for his leasehold interest. This can be accomplished by

the tenant's execution of ENG Form 1564, Consent to Offer to Sell Real Property, which shall then accompany the owner's offer to sell. In cases where the tenant executes this form, payment for the tenant's interest can be made to him in the closing of the purchase transaction. This procedure will be followed whenever possible. An exception is permitted in those cases where the landowner and tenant prefer to handle the matter as a private transaction between themselves. In such cases, it should be determined that a satisfactory agreement has been made by the landowner and tenant. Consideration should be given to any interest which the tenant may have in growing crops. This procedure is also applicable to any third party having an interest in the property, except through severance of a subsurface estate.

(5) Negotiations with landowners will be conducted in a fair and courteous manner. The negotiator must not, under any circumstances, resort to coercion or threats of condemnation.

(6) The negotiator has no authority to obligate the Government in any manner beyond the contract form. He must refrain from oral promises or understandings and include all terms and conditions in the contract form.

(7) Although appraisal reports cannot be made available for inspection by a landowner, the various elements of value considered by the appraisers may, and should, be discussed with the landowner to satisfy him that all elements of compensable values and damages have been considered in arriving at an overall value for the property being acquired. Care will be exercised during any discussion not to reveal specific amounts related to any elements considered in the appraisal, except the acquisition cost assigned to the dwelling for purpose of calculating replacement housing payment under section 203, Pub. L. 91–646.

(8) Any interest in a tract of land sought to be acquired, or any type of relationship with the owner, disqualifies the negotiator from participating in negotiations for the acquisition of that particular tract.

(9) An appraiser is not, under any circumstances, permitted to negotiate for the acquisition of a tract of land for which he has prepared the appraisal or reviewed it as reviewing appraiser.

(f) *Discussions With Landowners.* In order to avoid the creation of negotiating patterns, and keeping in mind that counteroffers must be justified as being just and reasonable, discussions with landowners should be conducted without disclosing the extent of the delegations and redelegations of authority to accept counteroffers. However, during negotiations on individual tracts, the landowners must be advised that, in the event of condemnation, the deposit will be in an amount no less than the approved appraised value, since the question of value cannot be resolved by negotiations. It must further be made clear that this advice is not in the nature of a threat, but is an explanation of the statement of policy directed by the Congress and the law. The negotiator will also inform each owner that offers and counteroffers made during negotiations are made without prejudice in the event of condemnation. The negotiator will make a notation on the Negotiator's Report to the effect that he has so informed the owner.

(g) *Obtaining the written counteroffer; preparation of negotiator's report.* If the negotiator considers that a counteroffer in excess of the approved appraised value is in the amount which should be considered for acceptance, the counteroffer will be reduced to writing on ENG Form 42, Offer to Sell Real Property, or on ENG Form 2970, Offer to Sell Easement, and be properly executed by the landowner. In such cases, a complete written record of negotiations with respect to each tract or ownership, as appropriate, will be maintained by means of ENG Form 3423, Negotiator's Report, Part I. This record will state the chronological history of negotiations, all elements considered in evaluating the landowner's final counteroffer, and the justification for such recommendation in accordance with § 644.84. The justification will be fully recorded in ENG Form 3423A, Negotiator's Report, Part II, which is a separate page of this report, and which will be removed in the Office of the Chief of Engineers prior to submitting the counteroffer assembly to higher authority for approval. Final action on

the counteroffer, either by the Secretary of the Army, the Chief of Engineers or under the delegated authority to Division and District Engineers, will be entered on this record as soon as that information is available.

### § 644.84 Counteroffers.

(a) *Consideration of counteroffers.* In negotiations with landowners, if agreement cannot be reached with a landowner as to the purchase price established by the appraisal, the lowest price demanded by the landowner may be considered by the Division and District Engineer, and the Chief of the Real Estate Division, on the basis of the following factors:

(1) *Variations in appraisals.* In the usual case, the Corps will have the opinion of only one appraiser with respect to the market value of the particular tract of land. It must be recognized that the opinion of a second equally competent appraiser might be higher or lower than that of the appraiser who appraised the property. Hence in considering counteroffers of landowners, Division and District Engineers should keep in mind that two equally competent appraisals may reflect reasonably divergent opinions of value as to the same property. Instances requiring two appraisals are covered in § 644.82(d).

(2) *Built-in costs, prior counteroffers, settlements and liability risks of proceeding to trial.* It is recognized that there are certain Government administrative costs and liability risks involved when property is condemned by the United States and the land value is judicially determined. These items are definite in character but the attendant costs will vary. ''Built-in'' costs of proceeding to trial include, but are not limited to, the following items: Salaries of all Government personnel participating in trial preparation, pretrial hearings, and the actual trial; cost of an additional appraisal(s); witness fees of contract appraisers employed by the Corps of Engineers or the Department of Justice; travel costs of all Government personnel and consultants participating in trial preparation, pre-trial hearings, and the actual trial; and cost of preparing trial documents and exhibits. Consideration should also be given to prior counteroffers which have been accepted and settlements approved prior to trial. ''Liability risks'' of proceeding to trial are the amount of the anticipated award over and above the appraised value, taking into consideration probable testimony on behalf of the Government and the landowners, as well as the history of condemnation awards in the Federal court jurisdiction in which the lands are located, and the amount of interest on a deficiency judgment which would result from the anticipated award. Serious consideration of the above factors may justify a recommendation for authority to accept a counteroffer which otherwise would appear to liberal.

(3) *Non-compensable elements of value.* Elements of value based on consequential damages or speculative values, as defined by the Federal courts, may not be recognized in considering a landowner's counteroffer. However, even though a landowner's counteroffer might include non-compensable items of value, favorable consideration of the counteroffer may be given if it can be justified on the basis of variances in appraisals, built-in costs, and liability risks of proceeding to trial.

(4) *Value of reserved items.* The salvage value of improvements and the value of crops and/or timber reserved by the landowners, as provided in § 644.86 (g), (h), and (i), will not be included in the amount of the counteroffer in determining the excess of counteroffers over appraised values when applying the dollar and percentage limitations in the delegations of authority to Division and District Engineers for acceptance of counteroffers. The determination of the excess will be made on the basis of the appraised value of the interests being acquired (including the value of the reserved items) compared to the cash payment which will be made to the landowner if the Government accepts his counteroffer. However, this method of analyzing the counteroffer is intended for use only in determining the limitations of authority. The overall transaction must be in the interest of the United States and not afford an unwarranted windfall to the vendor.

(b) *Application and Limits of Delegated Authority.* The negotiating procedures

outlined herein will apply to all acquisitions by the Corps of Engineers for the Army (military and civil), Air Force, Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and other Federal agencies which utilize the services of the Corps for acquisition of real estate. Delegations of authority to Division and District Engineers and to the Chiefs of their Real Estate Divisions to accept offers in excess of the appriased valuation have been made. Offers which do not exceed the approved appraised value may be accepted by authorized Division and District personnel regardless of the amount. Other offers will be handled as outlined in the paragraphs which follow.

(c) *Exercise of Delegated Authority.* The approval of a counteroffer over the appraised value, but within the authority redelegated to Divisions and Districts, will be evidenced by the Division Engineer, the District Engineer, the Chief of the Real Estate Division, or the incumbent of the position to which redelegations have been made, in one of the following manners:

(1) Manually accepting, on behalf of the United States, the offer to sell, as provided in § 644.87; or

(2) Manually executing a dated notation of approval of the purchase price, to be placed in the tract file, preferably on the original of the Negotiator's Report (§ 644.83(g)).

(d) *Submission of Counteroffers to the Chief of Engineers.* Recommendations for the grant of authority to accept counteroffers which are considered reasonable, but which cannot be accepted by the Division Engineer, the District Engineer, or the Chief of the Real Estate Division, within the limitations of delegated authority, will be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration. Negotiator's Reports, prepared in accordance with § 644.83(g) will accompany this submission; the contents thereof need not be repeated in the transmittal letter or in forwarding indorsements. The assembly will consist of the forwarding correspondence and the Negotiator's Report, with any additional material needed to support the recommendation of the Division and District Engineer. An analysis should be made of this offer as compared with other counteroffers accepted for the project, as well as with results in condemnation cases settled before trial. Signed offers will not be forwarded unless they contain deviations requiring approval by the Chief of Engineers. Appraisal reports are helpful and may be necessary reference for proper consideration of the recommendation. In the event the appraisal report was approved by HQDA (DAEN-REA), the forwarding letter should refer to the approval correspondence and data. It will not be necessary to enclose copies of the appraisal report. Where only a portion of an ownership is required, information should be furnished in the Negotiator's Report or in the transmittal correspondence (1) as to whether or not the remainder portion is considered to be an uneconomic remnant and (2) if so, as to whether or not an offer was made to acquire the entire property. Further, a statement is required as to whether or not it is considered that the acquisition will have any adverse effect on the acquisition of the remaining land required for the project.

### § 644.85 General negotiation procedures.

(a) *Provisions of Military Construction Appropriation Act.* (1) Section 108 of the Military Construction Appropriation (MCA) Act of 1978 (Pub. L. 95–101) provides that no part of the funds provided in the Act shall be used for purchase of land or easements in excess of the value as determined by the Corps of Engineers, except:

(i) Where there is a determination of value by a Federal Court; or

(ii) Purchases negotiated by the Attorney General or his designee; or

(iii) Where the estimated value is less than $25,000; or

(iv) As otherwise determined by the Secretary of Defense to be in the public interest.

(2) The above wording, except for paragraph (a)(1)(iv) of this section, constitutes a limitation on accepting or submitting a recommendation for approval of a counteroffer in excess of the appraised value. Paragraph (a)(1)(iv) brings military acquisition within the general acquisition policy required under Pub. L. 91–646. Future MCA Acts

should be carefully examined to determine if any limitations on acquisition have been restored.

(b) *Local cooperation projects.* The participation of a non-Federal agency in a federally-assisted project will be in accord with section 221 of Pub. L. 91–611 and subpart J (to be published). Acquisition of real property by a non-Federal agency will be in accord with sections 210 and 305 of Pub. L. 91–646 and this chapter.

(c) *Negotiations on the basis of ownership; ''Package-Deal'' negotiations.* (1) Normally, negotiations for all interests in all tracts which are being acquired from one parent ownership will be negotiated at one time. These tracts will usually consist of all those to which the same basic tract number has been assigned. Exceptions may be made only where negotiations for some of the tracts in a series must be accomplished to obtain possession, or for other critical reasons. Piecemeal acquisition must be avoided if at all possible.

(2) When more than one tract is operated by the owner as a unit, negotiations should take place on the two or more tracts or groups of tracts, whether or not they bear the same basic tract number.

(3) In cases where an owner insists on a ''package-deal'' negotiation on all tracts in the same ownership, or having at least one common owner, the negotiations will be considered as one transaction.

(4) Tracts which are in the same ownership, but which are not operated as a unit, should, unless the owner desires otherwise, be negotiated separately, on the basis of the separate appraisals which would be prepared in this type of case.

(5) Under paragraphs (c)(1), (2), and (3) of this section, the limitations of authority to accept counteroffers will be applied to the entire transaction.

(d) *Acquisition by condemnation if negotiations fail.* As soon as it is determined that a satisfactory agreement cannot be reached after full consideration of all reasonable counteroffers received, action will be promptly taken to acquire the property by condemnation proceedings, including the filing of a declaration of taking, in order to make funds available to the landowner and to maintain the project acquisition schedule. The landowner should be advised in writing, sufficiently in advance of the submission of the condemnation assembly to the Chief of Engineers, that condemnation proceedings will be recommended and the reason therefor. Condemnation assemblies will include copies of the Negotiator's Reports or other written records of negotiations. The estimated compensation to be deposited in the registry of the Federal District Court with the filing of a declaration of taking will be in the amount of the approved appraisal.

### § 644.86 Exceptions and reservations.

(a) *General.* Prior to the enactment of Pub. L. 91–646, the Corps encompassed a very generous policy of priority leasing with respect to former owners and tenants, in order to ease the burden of people who had to relocate because of the Corps' projects. Recognizing the inadequacies of the well-intentioned attempts by acquiring agencies to make whole the former landowner or tenant, the Congress enacted Pub. L. 91–646 which was approved on January 2, 1971. It would appear that the Congress intended that such law provide for the fair and equitable treatment of persons who are displaced, without having to rely on interim measures, such as priority leasing, to ease the inevitable relocation. In House Report 91–1656, the Committee on Public Works of the House of Representatives noted the likelihood that adequate housing may not be available readily and indicated this as its reason for including the provision in the law that satisfactory replacement housing must be available before displacement. In view of this, it is incumbent on the District Engineer to be opportune in seeking out replacement housing and to be judicious in the early relocation of owners and tenants before market changes eliminate any available supply of replacement homes. It is also essential that the District Engineer be diligent in providing the required relocation assistance advisory services and benefits authorized by the law.

(b) *Possession by Government.* It will be the objective of the District Engineer to have the premises vacated and

to cause unneeded improvements to be removed at the earliest practicable date and conform to the Congressional intention expressed above. In addition to the above, reasons for this objective are:

(1) To provide for the expeditious payment of benefits to former owners and tenants;

(2) To complete administration of the actual relocation of owners and tenants in a timely manner;

(3) To avoid maintenance and security problems with respect to acquired improvements;

(4) To prevent vandalism, trespassing and poaching with respect to acquired improvements;

(5) To avoid any implication that former owners or tenants may be permitted to remain indefinitely on the federally acquired property;

(6) To cause land to be leased on the basis of the most practicable size and configuration rather than on the basis of the size of the units acquired;

(7) To permit the general public to bid for the lease of federally owned land rather than restricting the privilege of leasing to the former owner or tenant; and

(8) To avoid a backlog of incomplete actions when construction or flooding is imminent or the land is otherwise required.

(c) *Possession reserved to former owners and tenants.* It is considered that the policy of granting priority leases to former owners and tenants has been overridden by the enactment of Pub. L. 91–646. Accordingly, this policy is being phased out, and where applicable, the acquisition agreement will set forth the dates agreed upon for the vacation of the premises by the owner and tenant without commitments, express or implied, as to the leasing of the premises after such dates. Procedure for providing for vendor's continued possession after the Government's acquisition is covered in paragraph (l) of this section.

(d) *Outstanding rights.* (1) When the United States is acquiring title subject to outstanding rights, the offer will differentiate between:

(i) Property which the vendor is excepting or rights which he is reserving and which are created for the first time; and

(ii) Rights which third parties have acquired in the past, generally referred to as outstanding rights in third parties.

(2) Exceptions or reservations of rights which the vendor may retain, without interfering with the construction or operation of the project, will be set forth in the offer and deed by a clause following the description, beginning with the words: ''Excepting * * *'' or ''Reserving * * *.'' Any other outstanding rights, subject to which the United States is acquiring title, held by third parties will be set forth in the offer and deed by a clause, following the description, beginning with words, ''Said premises are conveyed subject to * * *.'' Negotiations with the surface owner will include the owner's interest in the subsurface, unless acquisition of a lesser interest has been authorized by directive or specific approvals. These negotiations will not include interest severed and outstanding in third parties by purchase or lease, unless the surface owner agrees to remove the outstanding interest or agrees to obtain a subordination from the holder of the outstanding interest if that is consistent with the acquisition plan. If negotiations with the surface owner are successful, an Offer to Sell will be obtained, reciting the outstanding interest in the ''Subject to'' paragraph of the form, unless the surface owner has agreed to remove the outstanding interest (or obtain a subordination, if appropriate), in which case the Offer to Sell must recite specifically that the surface owner is assuming this obligation. In order to carry out the requirements of this paragraph, the title evidence must be examined prior to negotiations or, in any event, prior to acceptance of the Offer to Sell.

(e) *Right to repurchase prohibited.* In no case will an offer be obtained in which the vendor reserves the right to repurchase the property. Such a reservation would be contrary to the Federal Property and Administrative Services Act of June 30, 1949, 63 Stat. 377, 40 U.S.C. 471, *et seq.*

(f) *General reservation guidelines.* (1) Reservations of the right to remove

crops, timber, buildings, and improvements during a specified period will not be permitted without express approval of the Division or District Engineer on civil works projects, the Army or Air Force using service on military projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired.

(2) At the time of the approval of the acquisition by the Chief of Engineers, a determination will generally have been made as to whether subsurface rights and/or water rights will be acquired or left outstanding. Acquisition will be on the basis of such determination and as outlined below. Lands will be acquired subject to minerals, oil and gas rights or other similar interests severed and outstanding in third parties by purchase or lease and as approved by the Chief of Engineers.

(3) Where it is not possible to acquire or subordinate an outstanding interest by negotiation and the interest will not interfere with the operation of the project, consideration may be given to obtaining a waiver from the Office of the Chief of Engineers on the basis of taking a calculated risk rather than resorting to condemnation (paragraph (k) of this section). Waivers will be considered on a tract-by-tract basis or on a project segment basis. Since such waivers involve several elements of the Office of the Chief of Engineers (Civil Works or Military Construction as well as Real Estate), the basis for the calculated risk must be fully explained.

(4) Concurrently with the negotiations to acquire from the surface owner, negotiations should be opened with the owner of the subsurface rights or other interests severed and outstanding in third parties by purchase or lease and required for the project, unless these interests are held in ''block ownership.'' Block ownership exists where a person, corporation, or other entity owns subsurface or other interests in connection with more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface or other interests need not be contiguous to constitute a block ownership. Block ownership interests will not be acquired (or subordinated) piecemeal.

(5) Acquisition of the required interests, including subordination, held in block ownership should be started as soon as the extent of an operational unit is determined. As stated in paragraph (f)(4) of this section, all interests in a tract of land should be acquired at one time or as close in time as possible. Dual acquisitions of entire areas, one for surface rights and then for subsurface interests, should be avoided and acquisition of separate interests should be scheduled to coincide.

(g) *Reservation of buildings and improvements.* The reservation by vendors of the right to remove buildings and improvements will be permitted under the following conditions:

(1) Where the Division or District Engineer, in civil works projects, the using service in Army and Air Force projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired, has determined that they will not be needed for the purpose of the project;

(2) The consideration to the Government for the reservation will be an amount negotiated at not less than the appraised salvage value of the building and improvements which are reserved, and such amount will be deducted from the negotiated price at the time of negotiation prior to execution of the offer;

(3) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land:

> Excepting and reserving to the Vendor the right to remove (enter description of buildings) on or before _____ 19 __, which the Vendor agrees not to relocate on other land to be acquired for the project; provided, however, that, in the event that the said buildings and improvements are not completely removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said buildings and improvements which remain without notice to the Vendor; and provided further that, in the

event said buildings and improvements are relocated on other land to be acquired for the project, the United States shall have good and indefeasible title to said buildings and improvements without notice or further compensation to the Vendor.

The date on which the buildings or improvements must be removed must be fixed so that there is no interference with contruction or carrying out the mission of the project. The date for the removal should allow a reasonable time for removal of the improvements, usually not more than 90 days, except that for valid reasons the Division or District Engineer may grant an extension of time for removal. The right to remove such buildings cannot be prolonged indefinitely and certainly such right cannot survive the limited right of possession reserved to former owners and tenants as provided in paragraph (c) of this section.

(h) *Reservation of growing crops.* (1) The reservation by the owners of the right to harvest and remove growing crops should be encouraged in order to conserve land acquisition funds and to avoid the costs incident to disposal of crops by the Government, whenever there is a probability that possession of the land will not be required prior to the harvest season.

(2) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land:

Reserving to the vendor the right to harvest all of the growing crops located on the above described land on or before _____ 19____. In the event the crops are not harvested on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said crops, without notice to the vendor.

The date on which the crops must be removed must be fixed so that there is no interference with construction or carrying out the mission of the project.

(3) The consideration to the Government for the reservation will be an amount not less than the appraised value of the crops as of the date of surrender of possession as disclosed by an approved appraisal report, and such amount will be deducted from the purchase price at the time of preparation and execution of the offer.

(4) Where a tenant has an interest in growing crops, the value of his interest must be fixed by use of ENG Form 1564, Consent to Offer to Sell Real Property, which provides that the value of the tenant's interest, as agreed upon by the landowner and tenant, will be paid from the purchase price for the land. The use of this form not only protects the tenant but, in addition, provides a simple method for extinguishing rights which the United States is legally bound to recognize. Where a tenant wishes to reserve the right to remove crops, it must be done in the name of the landowner, and in like manner. To accomplish the foregoing, any other form is satisfactory, in lieu of ENG Form 1564, as long as closing requirements are satisfied.

(i) *Reservation of timber.* (1) The reservation of the right to remove timber by vendors will be permitted only with the express approval of the Division or District Engineer, with the concurrence of the using service in cases other than civil works projects of the Corps of Engineers.

(2) Reservation of the right to remove timber will be handled in substantially the same manner as that described for the reservation of buildings and improvements. If owned by a third party, ENG Form 1564 will be used in the same manner as for crops unless the timber interests are held in block ownerships. The consideration to the Government for the reservation will be an amount not less than the appraised value of the timber, giving full weight to any unusual difficulty in harvesting and transporting which are caused by the size, shape and location of the stand reserved, time limitations for removal, clearing requirements over the above those normally involved in prudent harvesting, and similar factors. If necessary, the stand reserved will be re-appraised on this basis. An amount not less than this appraised value will be deducted from the purchase price at the time of preparation and execution of the offer.

(3) Where a reservation is permitted, the following clause will be inserted in the offer following the description of the land:

Reserving to the vendor the right to cut and remove on or before _____ 19 __, all trees

in excess of _____ inches in diameter at breast height (DBH) located on the above-described land. In the event the timber is not removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said timber, without notice to the vendor.

(j) *Coal, oil, gas or other minerals.* Acquisition of land or interests therein for project purposes will usually include the subsurface as well as the surface, except in areas where minerals have more than a nominal value. When the mineral, oil and gas rights have an identifiable value or are the subject of separate estates in the land, such mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access, and not be inimicable to the environment. This is covered in more detail in subpart A. It is essential, however, in many acquisitions that the subsurface rights be acquired. In others, where these rights need not be extinguished, provision must be made in the offer the deed to subordinate such rights to project requirements, by excluding the owners of such rights from the area, or limiting exercise of such rights so that they will not interfere with the primary purposes of the project, including public access. The following guidelines are applicable in these cases:

(1) Where it has been determined that subsurface rights in the vendor, or outstanding in third parties, must be acquired, extinguished or subordinated, such arrangements will be made in the course of obtaining an offer for the surface or subsurface interests. Where the negotiations for acquisition, extinguishment or subordination of subsurface rights will be delayed, and it is considered advisable to proceed with surface acquisition to keep pace with project requirements, appropriate recommendations and justification will be submitted to HQDA (DAEN-REA) WASH DC 20314 for approval.

(2) If the owners of the surface and subsurface rights are agreeable, the separate interests can be acquired in a single transaction by use of ENG Form 1564, Consent to Offer to Sell Real Property. This method is the most desirable one, and, if used, the purchase price in the offer will cover both the surface and subsurface interests and the offer will not be taken ''subject to'' the subsurface rights.

(3) Subordination of the subsurface interest based upon the value of the minerals in place and which will allow continued production by the mineral owner or lessee must be pursuant to such terms as will safeguard the Government's interest and preclude a windfall to the mineral owner or lessee. Value of the minerals in place will not exceed the recoverable portion of said minerals using agreed upon production methods. See subpart A for detailed treatment in the section pertaining primarily to Real Estate Design Memoranda.

(4) When the third-party owner of subsurface rights refuses to enter into an agreement as contemplated in paragraph (j)(2) of this section, the title to the surface estate may be acquired separately, and the subsurface rights outstanding in third parties acquired as a separate transaction. The offer for the acquisition of the surface estate will provide for the conveyance of all interests of the surface owner in and to the subsurface estate, as well as all surface rights, and provide for taking ''subject to'' the subsurface rights outstanding in third parties. In such cases, the negotiations described in § 644.83 will be conducted on the basis of the approved appraisal, less the appraised value of the outstanding subsurface rights.

(5) Where it has been determined that the subsurface rights and interests therein need not be acquired, but the owners of such rights must be excluded from the area, and the owner of the surface is the owner of the subsurface estate, the offer will contain a clause providing that he relinquish, for the period that title to the tract is vested in the Government, all rights to enter upon the lands covered by the offer or that he will limit entry and exploration in a named manner so as not to interfere with the operation of the project. If third parties own subsurface rights or interests, a similar waiver of

the exercise of such rights must be procured from all third parties having any interest in the subsurface estate, whether as lessees or assignees. The waiver by third parties must be obtained at the time the offer is procured for the surface estate, unless these subsurface interests are held in block ownership.

(k) *Title exceptions—Administrative waivers.* (1) A distinction should be made between those title defects, objections, liens or encumbrances which, if not eliminated, might possibly defeat or adversely affect the Government's title, and those interests in the property owned by parties other than the grantor. All encumbrances, defects, and outstanding interests which cannot be waived under paragraphs (k) (2), (3), and (4) of this section must be eliminated or a waiver of the defect secured from the Attorney General.

(2) Title may be taken subject to an outstanding third party interest which has been administratively waived. Requests for administrative waivers shall be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration, together with recommendations from Division and District Engineers. The recommendation for waiver should be coordinated with the using agency, if other than Department of the Army land (military or civil works), and should be accompanied by a certificate signed by the Chief, Real Estate Division or the Chief Appraiser, certifying that the outstanding interest has no contributory value to the estate being acquired and will not interfere with the purpose for which the property is being acquired.

(3) It has previously been administratively determined that all lands for Department of the Army (military or civil works) or Air Force projects may be acquired ''subject to existing easements for public roads, public highways, public utilities, railroads and pipelines,'' and ''to the reservations, exceptions and any other outstanding rights contained in or referred to in patents issued by the United States,'' and also ''to water rights, claims or title to water, if any, or other similar title exceptions.'' A decision as to whether any of these exceptions should be eliminated is the responsibility of the Division or District Engineer, after coordination with the using service if other than the Department of the Army. If such interests are to be left outstanding, they should be included in the ''subject to'' clause of the Offer to Sell.

(4) Offers to Sell may be accepted subject to subsurface mineral interests owned by third parties in accordance with § 644.86(d). In such case, the ''subject to'' clause of the Offer to Sell should recite the specific interest which is being left outstanding. Where it is not possible to acquire or subordinate an outstanding subsurface interest by negotiations and the outstanding interest will not interfere with construction, operation or maintenance of the project, consideration may be given to obtaining a waiver from HQDA (DAEN-REA) WASH DC 20314 on the basis of taking a calculated risk rather than resorting to condemnation. Such waivers may be considered on a tract-by-tract, segment-by-segment, or project basis. Where a number of small mineral interests in a project are to be recommended for waiver, it is preferable that the recommendation be submitted on an entire project or group of segments at one time. Such a recommendation should specifically identify the subsurface mineral interests which are to be left outstanding, together with the estimated value of each interest, and should be accompanied by a map(s) on which the areas affected by the outstanding interests have been outlined. The basis for the calculated risk should be explained fully.

(l) *Possession reserved to vendor.* (1) The objective in acquisition is to obtain possession for project purposes at the earliest practicable time. It is recognized, however, that there are occasions when possession by the Government may be delayed and provision must be made for continued possession by the former owner in order to meet the requirements of the Government's acquisition policy and to further soften the impact of the Government's acquisition. The retention of possession will enable the owner-occupant of farm land, or residential property, to receive

his purchase money and remove improvements reserved by him, and permit occupants who may be former owners or tenants the privilege of harvesting growing crops and sufficient time to relocate to other locations. Accordingly, the Division or District Engineer may make provision for the former owner, occupant, and/or his tenant(s) to remain in possession of the land under the terms and conditions as follows:

(i) If the tract is to be acquired by direct purchase, the provision for retention will be written into the offer (ENG Form 42, ENG Form 2970, or ENG Form 1564) and will read substantially as follows:

> Notwithstanding the provisions of paragraph ____ of this offer, (and/or consent to option) the occupant (vendor and/or his tenant) now in possession of the property, in consideration of the protection and maintenance of the land, buildings, and structures, and protection of the property against loss by fire, waste, or other causes, to which the occupant hereby agrees, reserves the right to occupy the property until _____. Such occupancy is subject to revocation by the (Division) (District) Engineer at any time by giving ____ days notice in writing to the occupant if possession of the property is required by the United States; and provided further that the vendor-occupant or his tenant will remove no improvements or timber unless otherwise provided herein.

(ii) When the tract is to be acquired by condemnation, the circumstances of the right to remain in possession, which has been established as hereinafter set forth, will be fully described in the correspondence forwarding the condemnation assembly to HQDA (DAEN-REA-C) WASH DC 20314. The retention of possession without payment of rent is directed to the benefit of the occupant of the property with some property maintenance consideration to the Government. This procedure will not be used to permit non-occupant owners a means of retaining possession without payment of rent and at the same time collect cash rents or unreserved crop rents from tenants.

(iii) When the land being acquired is utilized by the owner and/or tenant for agricultural or related purposes, a period of possession may be allowed, if consistent with project requirements, to permit the crop owner to harvest growing crops, and to avoid abrupt dislocations. The period of possession reserved in the offer, or for which request for the order of the court is deferred in declaration of taking cases, should generally be co-extensive with the crop season or the date that, by custom in the community, leases of such properties ordinarily expire: *Provided, however,* That such period does not exceed 12 months from the date title vests in the Government. Reservation of possession or delay in entry of order of possession that will interfere with the Government's requirements for use of the land will not be allowed.

(iv) In the case of owner-occupied residential property other than farm residences, possession may be permitted for a sufficient time to allow orderly relocation, but no longer than 12 months after title vests in the Government.

(v) In connection with the acquisition of commercial, industrial, tenant-occupied residential property other than residences occupied by farm tenants, and special use properties, ordinarily the procedures of reserving possession to the vendor by a clause in the offer, or deferring the right to possession under a declaration of taking proceeding, should not be utilized. In such cases, after title vests in the United States, the continued possession of the property by vendor or tenant should be formalized by an outlease from the Government. However, if in the opinion of the Division and District Engineer a reservation for possession in the offer or deferral of order of possession is desirable in certain instances from a public relations standpoint or for other compelling reasons, such cases will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration.

(vi) The reservation of use and occupancy in the vendor and/or tenant under the terms of the offer or deferment of possession must be based on adequate consideration to the Government. It is anticipated, however, that items such as the vendor's maintenance of the land, buildings, and structures, his protection of the property against loss by fire, waste, or other causes, and the fact that his possession can be revoked within a short period of time, will, in most instances,

offset any rental for the period of the reserved occupancy or deferred possession which might otherwise be due. However, if possession is reserved by the vendor in the acquisition of commercial, industrial, and special use properties, or other type of property having a potentially high income factor, the fair rental value for the period of reserved use or deferred possession must be deducted from the agreed purchase price.

(vii) Special provisions for protection of the Government, such as those appearing in ENG Form 1366, Department of the Army Lease—River and Harbor or Flood Control Property, will be added to the reservation clause in the offer in cases where, in the opinion of the Division or District Engineer, they are necessary or desirable. If the case is not to be closed by direct purchase, the letter to the vendor notifying him of the Government's intention to file a declaration of taking will set forth the fact that possession is to be deferred and for what period, and will contain a statement as to the Government's expectation that the vendor will properly maintain and protect the premises, and perform such other acts (or refrain from such acts) as deemed advisable by the Division or District Engineer. Both the letter of notice and the reservation clause in the offer will provide that the right to possession may be revoked on 30 days notice to the vendor.

(2) It is recognized that farmers may experience difficulty in finding substitute farms needed for their livelihood within one year, and other owners and tenants may encounter difficulty in relocating within one year. Therefore, the District Engineer, as an exception to the procedure in paragraph (l)(1) of this section may lease properties to former owners or tenants at the fair market rental value for up to one additional year where the circumstances justify such action, and, in such event, the record will contain the reasons justifying the action. Any occupancy by the former owner or tenant beyond 12 months from the date the property was acquired by the Government will be covered by a lease and will provide payment of the fair market rental value of the property leased.

(3) The District Engineer, through channels, may request the Chief of Engineers to grant exceptions to this policy where unusual circumstances warrant such consideration. In keeping with the intent of this action, it is hoped that such cases will be minimal in number.

(4) The following will apply with respect to advance land acquisition projects. Former owners and tenants whose properties were acquired *prior to August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until the establishment of a land management use plan and thereafter, if the property is available for leasing, for a single five-year term. Former owners and tenants whose properties are acquired *after August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until construction commences: *Provided,* The property is available for leasing. After construction commences, if the property is not immediately required for project purposes, such former owners or tenants will be allowed to remain on the property by lease for an additional two years. Continued possession of properties acquired after the date construction commences will be governed by the procedure outlined in paragraph (l)(1) of this section.

(m) *Schools, cemeteries, and facilities of State and local governments.* ER 1180–1–1, Section 73, provides for the discretionary relocation by the Chief of Engineers of schools and other local governmental facilities, and acquisition of the sites under section 111 of Pub. L. 85–500. Section 73 will be followed in the acquisition and relocation of cemeteries. Where the school was formerly a part of an abutting tract, offers for the abutting tracts will contain a clause whereby the vendor or vendors agree to quitclaim all right, title, and interest whether vested or reversionary, in and to the school site in executing the deed to the United States.

(n) *Reservations prior to completion of offer.* Where immediate possession of areas is necessary and is obtained by right-of-entry or the filing of condemnation proceedings, owners often

wish to move, taking with them buildings and improvements, or wish to harvest timber or crops, prior to any offer by the Government for the sale of their land. This action is authorized only under the following conditions:

(1) Appraisals of all the land, buildings, improvements, timber, and crops of the particular tract are completed and approved.

(2) A determination is made by the Division or District Engineer that the buildings, improvements, and timber will not be needed, and the harvesting of timber or crops will not interfere with construction or operation of the project.

(3) ENG Form 1565, Agreement for Removal of Property, will be obtained from all persons having an interest in the property to be removed. This agreement will recite the amount which the owner is willing to have deducted from the value of the tract as a whole for the right of removal, which may not be less than the appraised salvage value of the buildings, improvements and timber, and the appraised value of the crops, as set out in paragraphs (g), (h), and (i) of this section.

(4) ENG Form 1565 will be obtained and accepted by the Division or District Engineer, or the Chief of the Real Estate Division.

(5) If an offer is obtained later, an appropriate reservation must be inserted in the Offer to Sell to reflect the prior agreement relative to reservations and removals of property and the agreed value of same.

(6) If it is necessary later to file a declaration of taking on the particular tract, a copy of the agreement (ENG Form 1565) will be forwarded with the correspondence transmitting the declaration of taking assembly for use of the Department of Justice in the court action. The agreement by its own terms will serve as a stipulation as to the amount to be deducted from the ultimate award for the right of removing buildings, improvements, timber or crops.

(o) *Loss or damages to improvements, timber, or crops*—(1) *Insurance protection against risks.* The Government does not carry property insurance of any nature. Vendors, however, may be advised as to their liability for certain losses, and that insurance protection against such risks is optional. When buildings, improvements, timber, or crops on land being acquired by the United States are protected by insurance in effect when acquisition activities are initiated, the time and method of cancellation and negotiation for refund on premiums paid will be the responsibilities of the vendor. In order to avoid double payments to vendors, any amounts actually collected by vendors under the terms of the insurance policies for damage or loss occurring after acceptance of the offer by the Government will be deducted from the purchase price, regardless of when title is vested in the United States or the right to possession is exercised.

(2) *Fixing liability*—(i) *Prior to vesting title in Government.* Buildings, improvements, timber, or crops on land acquired by the United States by purchase or condemnation remain the property of the vendor until title has been vested in the United States by delivery of a deed of conveyance or filing of a declaration of taking, and loss or damage thereto caused by fire, acts of God, theft or vandalism, before such vesting of title, will be borne by the vendor, except as provided below.

(ii) *Possession by Government.* When the right to possession has been exercised by the United States under an accepted Offer to Sell, condemnation proceeding, or possession has otherwise been surrendered to and accepted by the United States, losses arising from damage to buildings, improvements, timber, or crops by fire, acts of God, theft, or vandalism will be borne by the United States. If, however, prior to vesting of title, the right to possession has been exercised, or surrender has been made and accepted only to part of the property, and the vendor continues to use buildings and/or to cultivate or harvest crops or timber, such loss will be borne by the vendor as to buildings, timber or crops retained.

(iii) *Title in Government.* After title has vested, losses to buildings, timber or crops not caused by the willful act or gross negligence of vendor will be borne by the United States; provided, however, that if the vendor continues in possession of buildings, timber or crops, after title has vested, and the

deed, stipulation or order of court has reserved to the vendor the right to remove such buildings, timber or crops, loss or damage thereto, both before and after removal, caused by fire, act of God, theft, or vandalism will be borne by the vendor, only to the extent of the amount deducted from the purchase price, as provided in the deed, stipulation or order of court, for the right to remove.

(p) *Other reservations.* The following rights may be reserved to the owner wherever such reservation will be to the financial advantage of the Government and it has been determined by the Division or District Engineer that the reservation of the rights will not interfere with the operation of the project. These rights may be reserved in the Offer to Sell and in the condemnation estate but only whenever mutual agreement between the owner and the Government concerning all phases of the acquisition except just compensation has been reached, or by stipulation for settlement of condemnation cases, subject to approval of revestment, if any, by DAEN-REA.

(1) *Rights-of-way for stock to water.* Reservations of rights-of-way will be permitted for watering stock, in the case of bona fide livestock operations, such as dairymen and ranchers. Such rights-of-way will be limited to a reasonable width and will not be permitted in public access and use areas. The reservations will be so worded as not to require the owners to fence the rights-of-way, but to provide that if they elect to do so, they must provide gates at satisfactory intervals to permit crossing of the rights-of-way.

(2) *Rights-of-way for water pipeline for domestic use.* Reservations of rights-of-way for water pipelines for domestic use (household, stock watering, garden, farm yard, but excluding irrigation) may be permitted by providing for the reservation of a temporary or permanent easement.

(3) *Rights-of-way for water pipline for irrigation use.* (i) In areas where irrigation is commonly practiced, or is of paramount importance, owners of remainder or contiguous lands will be permitted to reserve a sufficient real estate interest to place water pipelines across Government-owned lands, in order to obtain financing for irrigation development and/or in order to be assured of being able to carry on irrigation operations. In ''water rights'' States (prior appropriation of water rights), the reservation of such interests will be permitted only to those owners who have established water rights from the State, or who may in the future obtain such rights. When irrigation is a project purpose, such reservation must be coordinated with the Bureau of Reclamation.

(ii) Under these circumstances, a landowner may be permitted to reserve an easement and right-of-way for a water pipeline and pumping unit across the land he conveys, by appropriate provisions in the offer to sell and in the deed to the United States. In ''water rights'' States, this reservation will be ''for the exercise of established water rights, although no right to use water is created hereby.'' (This phraseology is to be incorporated in the reservation.) The reservation will also include any pertinent provisions considered essential by the Division or District Engineer, such as requirement to install the pipeline underground and at a specified depth.

(iii) Reservations of this nature will also be permitted in those cases where acquisition is by condemnation. In these acquisitions, the reservation may be recited in the complaint and declaration of taking, whenever full agreement except as to just compensation has been reached, or it may permitted later by stipulation.

(iv) When the project is located in an area in which the Bureau of Reclamation is developing, or planning to develop, irrigation districts or systems, prior coordination with the Bureau will provide that copies of all deeds and final condemnation judgments which recite reservations under this paragraph will be furnished to the local office of the Bureau. Thereafter, the Bureau of Reclamation will be responsible for supervising the exercise of the easements to insure compliance with Reclamation laws.

(v) Plans to provide for irrigation will be fully covered in the Real Estate Design Memorandum.

(4) Acquisitions in which these rights are to be reserved must, of course, be

based on an appraisal of the fair market value of the estate to be acquired. Since the appraisal would probably be made originally on the basis that there would be no reservation, revision must be prepared whenever the reservation appears to be appropriate, to reflect the reduction in severance damages or other financial advantage accruing to the Government. Consideration of counteroffers which include proposals for these reservations by the landowner will be based on and compared with the appraised fair market value of the estate proposed to be acquired. Deposits with a declaration of taking will be based on the appraised fair market value of the estate to be acquired by the condemnation action.

### § 644.87 Preparation and execution of offers.

(a) *Fee acquisition offer form.* The use of the latest revision of ENG Form 42, Offer to Sell Real Property, is required in all authorized projects, except in those cases where agreements with the landowners can be fully reflected in an executed deed, and where the provisions of §§ 644.81(c), 644.82(a), and 664.86 are not applicable or can be fully complied with without the use of an Offer to Sell. When an agreement as to terms has been reached with the owner, or a counteroffer has been received which will be considered for acceptance or submitted for consideration by higher authority, a draft of the offer will be prepared, with particular attention to the following instructions:

(1) No changes or interlineations in the printed portions of the offer form will be permitted, unless authorized by the Chief of Engineers, except where the words ''general warranty deed'' are changed to another form of deed.

(2) Insert legal land description of property to be acquired, or attach description by Exhibits to be identified on page 1.

(3) The word ''none'' should be inserted in the blank spaces following the first and third lines, respectively, on page 2 of the offer form when title is being acquired free and clear of all rights outstanding in third parties and the vendor is not permitted to except or reserve any right or interest in the property to be conveyed to the Government.

(4) Particular attention is directed to § 644.86, regarding exceptions and reservations and outstanding rights in third parties. No exceptions or reservations of crops, timber, buildings and improvements, subsurface rights, or any other interest will be incorporated in any offer to sell unless the required approvals have first been obtained.

(5) In any case where the offer form deviates from the standard approved forms or contains any conditions, exception, or reservation contrary to these instructions, the assembly will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration with the recommendations of the Division and District Engineer. This may be done at the same time a counteroffer is submitted to DAEN-REA in accordance with § 644.84(d).

(6) The landowner's name will be set forth in the offer in the exact way in which it appears on record.

(7) When it is necessary for a corporate agent, fiduciary, or any person other than an individual owner to execute the offer, satisfactory evidence of the authority to act for the owner must be attached to each of the copies of the Offer to Sell.

(8) Where it is necessary to attach sheets to the offer in order to fully set forth the terms of reservations, exceptions, or outstanding rights in third parties, such additional sheets must be securely attached and initialed by all parties signing the Offer to Sell.

(9) The name and address of the person or persons to whom notice of acceptance is to be sent must be accurately set forth. The address where the landowner can be reached after he vacates the property, if different from the address to which the notice is to be sent, should be obtained.

(b) *Submission, acceptance, and distribution of offers to sell.* (1) For each purchase transaction, the original offer and four copies will be signed by the landowner and spouse, if any. A copy (5th) will be left with the landowner when the offer is obtained.

(2) Division and District Engineers, the Chiefs of the Real Estate Divisions, and the incumbents of the position to

which authority is delegated as provided in § 644.84(d) are authorized to accept offers to sell for the acquisition of land or interests in land and easements, licenses, permits, or similar acquisition instruments: *Provided*, The price set forth in the instrument is within their authority to approve or has been approved in writing by higher authority. The Division or District Engineer may also delegate to Project Managers (including the heads of any field offices with responsibility for real estate acquisition) authority to execute real estate instruments by which land or interests in land are acquired by agreement with landowners, provided the consideration set forth in the instrument is within the approved appraised value or has been approved as provided in § 644.84(c). Upon approval of the offer or other instrument requiring payment to the landowner, a determination that necessary funds are available, and acceptance of the instrument under the authority contained in this subparagraph, the instrument will be numbered in conformity with existing regulations and will immediately be distributed as follows:

(i) Original offers to sell will be retained at the Division or District for site audit.

(ii) Send signed copy to vendor as provided in paragraph (b)(3) of this section below.

(iii) Attached conformed copy to title assembly.

(iv) File signed copy with project records.

(3) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the vendor by transmitting a signed copy of the contract (accepted offer) to vendor by ENG Form 53, Notice of Acceptance of Offer to Sell Real Property.

(4) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the using service, in the case of military acquisition, that the Offer to Sell has been accepted and that the Government has ''the right of immediate occupancy and use of the land,'' subject to the terms of the accepted offer. The land should be clearly identified to the using service.

(5) Instruments which do not provide for payments to landowners will be distributed in accordance with regulations governing such cases.

(c) *Easement acquisition offer form.* (1) The use of ENG Form 2970, Offer to Sell Easement, is required for the acquisition of all types of easement estates, such as flowage, spoil, drainage, road, railroad, utility, restrictive or safety (Army and Air Force), clearance (Air Force), and other required easement acquisitions, except in those cases where agreements with landowners can be fully reflected in an executed deed, and where the provisions of §§ 644.84(b) and 644.86(d) are not applicable or can be fully complied with without the use of an Offer to Sell. Pages 1 and 2 of ENG Form 2970, containing the terms and conditions of the acquisition, are standard and need no modification. The tract of land in which the particular easement will be acquired will be described in Exhibit ''A,'' and the easement estate will be set forth in Exhibit ''B'' to ENG Form 2970. Division Engineers are authorized to approve deviations in ENG Form 2970 in all cases where the easement does not cost more than $500: *Provided*, That any deviation from the estates listed in Figure 5–6 of ER 405–1–12, must have the prior approval of DAEN-REA. When easements are being acquired from a vendor from whom fee is also being acquired, ENG Forms 42 and 2970 may be combined into one instrument in order to complete the entire acquisition as one transaction.

(2) In the acquisition of easements for rights-of-way for access roads, utility lines, etc., which cross or encroach upon rights-of-way or property of railroad companies, public utility companies, cities, counties and States, ENG Form 893, License for Installations Upon Right-of-Way, may be accepted, at the discretion of the Division or District Engineer, provided it is determined that such companies, municipalities, counties, or States are not vested with authority to convey a perpetual easement and the granting of a license under the conditions recited in ENG Form 893 will protect the interests of the United States and grant sufficient use of the right-of-way or land for project purposes. Normally a license of this nature should be obtained

for a nominal consideration. Occasionally it will be necessary to provide for the payment of a small fee to cover the licensor's engineering and administrative expenses. In such cases, the consideration for the granting of a license will not exceed $100. In cases where the licensor demands a consideration equal to the appraised value of the right to be acquired, consideration will be given to the acquisition of a perpetual easement by condemnation, if the licensor is not vested with authority to grant such an easement.

(3) The description of the tract over which an easement is being acquired should be prefaced by terminology similar to that of ENG Form 42 which makes the tract inclusive of the abutting owner's interest in contiguous roads and other easements, if any.

(4) Offer assemblies will be prepared, accepted, and distributed in the same manner as provided for fee acquisition, except that ENG Form 3422, Notice of Acceptance of Offer to Sell Easement, will be used.

(d) *Payment.* After acceptance and distribution of the offer assembly and the acquisition is ready for closing, payment will be made.

(e) *Cancellation of contracts.* If, for any reason, it is necessary to cancel a contract for acceptance by the Government of the Offer to Sell, the cancellation will be effected by using ENG Form 1572, Agreement for Mutual Cancellation of Contract. Upon execution of this agreement by the landowner and the Division or District Engineer, or the Chief of the Real Estate Division, distribution of the original and copies of the agreement will be the same as for the accepted Offer to Sell.

(f) *Transfer of tracts from purchase to condemnation.* If, at any time in the course of acquisition by purchase, it becomes apparent that acquisition by purchase will involve substantial delay or cannot be accomplished, action will be taken to acquire the land by condemnation.

(g) *Acquisition of land by donation.* (1) In cases where the acquisition of real property has been authorized and approved by donation, ENG Form 42, Offer to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, will be entered into setting forth the terms and conditions of the donation and conveyance to the United States.

(2) The offer, when approved and accepted, will be distributed in accordance with paragraph (b)(2) of this section.

(3) Title clearance and closing of donation cases are processed in the same manner as any other fee or easement acquisition.

(h) *Vacation of property by landowners and tenants*—(1) *Notice to landowners.* From the inception of the project, landowners and tenants will be instructed to notify the Division or District Engineer or Real Estate Project Manager, in writing, as soon as they vacate their property; to turn in their keys whenever possible in order that the buildings may be kept under lock; and to keep the Division or District Engineer or Real Estate Project Office advised of any changes in address in order to expedite title clearance, payment, closing action, and the distribution of funds in condemnation proceedings. Landowners and tenants will be informed that, in order to protect their interests, they should not move from their property and that the Government will not require them to surrender possession until:

(i) They have received notice of acceptance of an offer granting the Government the right of immediate possession; or

(ii) They have been served notice of the filing of a condemnation proceeding by which the Government has obtained the right of possession.

(2) *Complete appraisals prior to vacation.* Where an offer is accepted or a declaration of taking is filed, the individual tracts will have been surveyed and appraised. In condemnation proceedings for possession, there may be cases in which individual tract surveys and appraisals will not have been completed at the time the condemnation proceeding is filed. In such cases, landowners and tenants will not be required to surrender possession, and buildings and improvements will not be removed or destroyed in the conduct of construction work, until individual appraisals have been completed and photographs have been procured.

(3) *Inspection of property.* (i) As soon as a landowner or tenant gives notification that he is vacating his property, or as soon as this information is obtained from any other source, the District Engineer will immediately have a member of his staff make a personal inspection of the property and execute ENG Form 1567, Report on Vacation of Property. The inspection will be made with a view of determining whether all buildings, improvements, and crops on the land to be acquired, as listed in the appraisal report, are still on the land and in substantially the same condition as they were on the date of the appraisal.

(ii) Where buildings, improvements, and crops have been removed under a reservation in the offer, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(iii) Where buildings, improvements, and crops have been removed or destroyed in the conduct of construction work on the project, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(iv) It will be determined whether or not the land is wholly unoccupied and vacant and whether there is evidence of present use thereof for farming and other operations.

(v) The original report will be retained in the real estate project files. The second copy will be held for the use of the closing attorneys on purchase cases, or for the use of the local representative of the Department of Justice in condemnation cases.

(i) *Public relations.* One of the most difficult problems encountered in the real estate activities of the Department of the Army, particularly from a public relations standpoint, is that of the sudden dislocation of families, tenants as well as owners, and the relocation of these families. Special attention, therefore, will be given to their problems.

(j) *Payment of relocation assistance and acquisition.* Public Law 91–646 provides for reimbursement of certain expenses incurred by owners and tenants who are displaced as the result of Federal and federally-assisted programs. Payment of relocation assistance benefits and certain costs incurred by the vendor in transfer of title to the Government and certain litigation expenses incurred by the owner is provided for under that Act.

### § 644.88 Other acquisition.

(a) *Acquisition from other Federal departments and agencies*—(1) *Transfers.* Transfers will be obtained from other Government agencies after issuance of real estate directives. Muniments of title will be obtained from the transferring agency, if possible, and be forwarded to HQDA (DAEN-REP) WASH DC 20314, with the original transfer letter or document. Title 10 U.S.C. 2571 authorizes transfer of real property within the Department of Defense (10 U.S.C. 2662).

(2) *Permits.* Upon receipt of a proper request from an authorized command, service or agency, Division or District Engineers and the Chiefs of the Real Estate Divisions are authorized to obtain, accept, and renew permits from other Government departments or agencies for the temporary (five years) use of land (except public domain for Air Force) and buildings. The use of over 500 acres of public domain land must have prior approval by the Assistant Secretary of Defense (MRA&L) pursuant to Department of Defense Directive 4165.12.

(b) *Withdrawal of public domain lands and right-of-entry permits for temporary use.* (1) Withdrawal of public domain lands will be necessary if a site is selected for construction and/or there is a continuing military use. Except in time of war, withdrawals in excess of 5,000 acres for military use must be by authority of an Act of Congress (Pub. L. 85–337, 43 U.S.C. 156).

(2) Requests for withdrawal of public domain land will be made to the appropriate State or Regional Supervisor of the Bureau of Land Management (BLM), Department of the Interior, by the Division or District Engineer, pursuant to 43 CFR part 295, as soon as a real estate directive is issued.

(i) If use the of land is needed promptly to meet a construction deadline or for other use, the request for withdrawal will contain this information, and the BLM supervisor will be requested to expedite submission of his report to BLM in Washington, and to

publish the proposed withdrawal in the FEDERAL REGISTER as soon as possible.

(ii) A copy of the request will be forwarded to HQDA (DAEN-REA) WASH DC 20314 (with a copy to HQ, USAF (PRER), WASH DC 20330, on Air Force projects), with request for assistance in obtaining issuance of the Public Land Order in time to meet construction or military use deadline.

(3) Pursuant to authority of 43 U.S.C. 416, requests for withdrawal of public domain lands may also be made to the appropriate State or Regional BLM Supervisor by the Division or District Engineer for the reservation of those public domain lands which will eventually be required for authorized Civil Works projects, in order to proceed with planning phase work and to prevent adverse private entry thereon. Such action will permit administrative jurisdiction to remain with the present Government agency for continued utilization not in conflict with the eventual purpose of the project. A copy of the request will be furnished to DAEN-REA.

(4) If a withdrawal is requested, the BLM supervisor cannot grant a permit to use the area; however, permits can be obtained for survey and exploration purposes, since these do not involve construction or military use of the land.

(5) Necessary rights-of-way will be obtained under the authority of section 507, Pub. L. 94–579, approved October 21, 1976.

(c) *Acquisition of outstanding rights on public domain*—(1) *Acquisition of possessory rights to mining claims.* (i) Upon issuance of a real estate directive to extinguish outstanding mining interests in the public domain, and notification that the Bureau of Reclamation (BLM) has withdrawn the public domain from appropriation under the public land laws and the public mining and leasing laws, the Division or District Engineer will, if necessary to obtain possession for construction or other project purposes, recommend to the Chief of Engineers the filing of a complaint in an eminent domain proceeding, based on a perimeter description of the project, and the obtaining of an order of immediate possession. Thereafter, the Division or District Engineer will promptly determine the possessory mining claims within the area withdrawn, and he is authorized to acquire such claims for either a nominal sum or an amount not to exceed the combined estimated costs of obtaining a detailed appraisal report and having the validity of the claim investigated by the BLM. This authority is limited to $1,000 per claim.

(ii) If an offer to settle is made on the basis provided in paragraph (c)(1)(i) of this section, and is not satisfactory to the possessory mineral owner, the Division or District Engineer will request the BLM to investigate the validity of the claim. In such case, under Comptroller General Decision B-143921, the District Engineer is authorized to make an agreement with the BLM for reimbursement of the following:

(A) Examination of the claim itself and assembling of the evidence to support the claim of invalidity.

(B) The presentation of the evidence, the cross-examination of witnesses for the mining claimant and other related expenses (subpart A).

(iii) The Corps of Engineers is not authorized to reimburse the BLM for hearing of the evidence and the rendering of the decision as to the validity of the mining claim.

(iv) If determined to be valid, claims will be appraised and an offer will be made to the owner at the approved appraised value. BLM is authorized to determine value of the claims and the Division or District Engineer may wish to arrange with BLM to perform this service on a reimbursable basis. In the event the offer based on the approved appraisal is not acceptable to the owner, and a reasonable settlement cannot be effected by negotiation, the Division or District Engineer will forward a report to HQDA (DAEN-REA) WASH DC 20314 with recommendation as to whether the claim should be acquired by declaration of taking or be left outstanding. Those cases in which occupants were dispossessed under the order of immediate possession, referred to in paragraph (c)(1)(i) of this section, will be given priority attention in all phases of the procedure set out herein, including preparation and submission of declaration of taking assemblies in appropriate instances.

(2) *Acquisition of grazing rights.* (i) Grazing rights in the public domain are granted pursuant to the provisions of a series of Congressional acts commonly referred to as the Taylor Grazing Act, 43 U.S.C. 315 *et seq.* Section 315q of this Act provides as follows:

> Whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding grazing permits or licenses and persons whose grazing permits or licenses have been or will be cancelled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing contained in this section shall be construed to create any liability not now existing against the United States.

It is emphasized that payments under this section are administrative; further that this section applies only to military projects.

(ii) Upon issuance of a real estate directive to acquire or terminate grazing rights in the public domain or other property owned or controlled by the United States and notification that the Government department controlling such lands has granted a right-of-entry or transferred the lands to the Departments of Army or Air Force, the Division or District Engineer will initiate action to acquire or terminate such grazing rights as authorized by the real estate directive.

(iii) Appraisals will be prepared in accordance with subpart B and the guidelines set forth in Comptroller General Decision No. B-132774, dated October 9, 1957.

(iv) Discussions with landowners concerning acquisition of a ranch unit will be conducted in accordance with the procedures for fee acquisition.

(v) Offers will be prepared, accepted, and distributed as provided in § 644.87.

(vi) Title procurement and title clearance relating to the acquisition of title to any fee lands within the ranch unit will be the same as in any other fee acquisition. In preparing title evidence covering leasehold interests, a search of the records will be made by the Division or District Engineer Office and ENG Form 909, Attorney's Preliminary Certificate of Title, will be prepared. In connection with the search of the records, it should be noted that Federal grazing privileges may be pledged or encumbered with mortgages.

(d) *Acquisitions under provisions of relocation contracts.* (1) When land or interests therein, including subordination of minerals, required for project purposes are acquired under the provisions of relocation agreements negotiated in accord with Section 73, ER 1180–1–1, it will be necessary to procure title evidence covering such land and interests. If the value of interests so acquired is not otherwise determinable for compliance with § 664.84, said value will be determined by the Division or District Engineer by means of a memorandum appraisal to be retained in the tract file. While this type of acquisition does not involve the closing procedure set forth in § 644.70, so much of the title assembly described as is applicable, plus an executed or certified true copy of the relocation contract, will be used in the examination and approval of the title. The disposition of final title assemblies will be governed by § 644.71.

(2) The procedures described in §§ 644.81 through 644.88 do not apply to the extinguishment of outstanding rights, including subordination of easements and similar interests, under the provisions of relocation contracts, as differentiated from the acquisition of land or easements, or the subordination of oil, gas, and other mineral rights, to be utilized for project purposes.

(e) *Acquisition by exchange*—(1) *Military.* The authority to acquire land by exchange for military projects is provided in 10 U.S.C. 2672, and in the Military Construction Authorization Act passed each year. As an example sections 601 and 702, Pub. L. 95–82, August 1, 1977, the Military Construction Authorization Act, 1978, provides in part, that ''the authority to acquire real estate or land includes authority to make surveys and to acquire land, and interests in land (including temporary use), by gift, purchase, exchange of

Government-owned land, or otherwise.'' Title 10 U.S.C. 2662a–4 provides that a transfer of real property owned by the United States to another Federal agency or another military department or to a state must be reported to the Committees on Armed Services if the estimated value of the property is more than $50,000. A prerequisite to any acquisition by exchange is authority for the acquisition.

(2) *Civil works.* The authority to exchange land or other Government property for private lands or property in execution of an authorized river and harbor or flood control work or improvement is found in 33 U.S.C. 558b and 558b–1.

(3) *Coordination with the Office of Management and Budget (OMB).* OMB requests that each proposal to use Government-owned property in a land acquisition exchange be cleared with the appropriate Associate Director of OMB. Disposal actions where exchange through the authority of the General Services Administration or specific legislation is envisioned will be cleared with OMB prior to filing a disposal report pursuant to 10 U.S.C. 2662. A draft letter to the Associate Director, Office of Management and Budget will be submitted to HQDA (DAEN-REA) WASH DC 20314 stating the requirement for the new acquisition, the description of the property to be excessed, its estimated fair market value, and a justification for the exchange of that property as constituting its highest and best use. OMB clearance will be required before disposal reports outlining exchange proposals are filed with the Congress.

## INVOLUNTARY ACQUISITION BY THE UNITED STATES

### § 644.101 General.

This Section describes procedures of the Corps of Engineers relating to the involuntary acquisition of land and interests in land on the basis of a physical appropriation or use by the United States. It is applicable to all Division and District Engineers having real estate responsibilities.

### § 644.102 Examples of involuntary acquisitions.

While the Secretary of the Army and Secretary of the Air Force have no authority to acquire interests in real property except under express authorization and appropriation made by Congress, the Government may, nevertheless, in the performance of an authorized act involuntarily acquire an interest in real property, for which the owner is entitled to just compensation. Whenever a plaintiff successfully prosecutes litigation which establishes that an interest in real property has been taken, the interest so taken should be confirmed in the form of a grant, wherever possible. The instrument should be recorded in the public land records and permanently retained in the real estate files, as evidence of the interest taken and as a protection against possible future claims of purchasers for value without notice. No employee or representative of the Corps of Engineers shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his property, as prescribed by Pub. L. 91–646. Examples of involuntary acquisition are:

(a) Damage to real property caused by flooding, saturation, seepage, erosion, or other causes arising out of the construction, operation, or maintenance of an authorized project.

(b) Damage as a result of overflights of aircraft.

(c) Other instances where Government actions result in a restriction of the use of property.

### § 644.103 Litigation Reports.

In those cases where a landowner files suit alleging that the Government took his property or an interest therein, a litigation report should be furnished in accordance with ER 1180–1–1. Litigation reports will be submitted in quadruplicate in cases involving military installations, and in triplicate in cases involving civil works. District and Division Engineers will furnish an additional copy direct to the local United States Attorney in actions in a United States District Court. In addition to the information required by ER

1180–1–1, there will be furnished preliminary certificates of title to properties subject to the taking, covering a period of search of at least 25 years prior to initiation of the action, and indicating the date of acquisition of the plaintiff's interest. Certificates may be procured commercially, or may be prepared by a staff attorney.

(a) *Avigation easements.* Reports on actions alleging the taking of an avigation easement should include the following information together with supporting exhibits:

(1) Permanency of the installation and its designated use;

(2) Dates of commencement of use of the runway involved and of each extension thereof;

(3) Date of commencement of takeoffs and landings by regularly assigned aircraft of the type (identify) causing the taking;

(4) Frequency and actual height of flight of the particular aircraft over some portion of plaintiff's property;

(5) Any applicable zoning regulations affecting use of the property;

(6) A drawing at an approximate scale of 1″ to 400′ showing the location and length of the present runway, its original length, and each extension, and also showing the location of plaintiff's property with relation to the approach-departure zone of the runway and the longitudinal distance in feet, measured along the extended center line from the end of the runway and the lateral distance measured perpendicular to the extended center line, of the plaintiff's property and of any dwellings thereon.

(7) A vertical projection of the drawing at an approximate scale 1″ to 100′ showing the approach-departure clearance surface at the specified slope ratio and the mean sea level heights of the end of the runway and of the plaintiff's property and any dwellings thereon; and

(8) Name of the person qualified to testify concerning preparation of the drawing.

(b) *Clearance easements.* Litigation reports on actions alleging the taking of a clearance easement will contain the following:

(1) Details of any prior acquisition of clearance easements over the same property;

(2) Statement as to any outstanding clearance easement directives, including criteria for approach and transition zones, status of negotiations, and copies of appraisal reports;

(3) Statement that all acquisition of clearance easements has been stopped, unless their prompt acquisition is necessary to provide for current flight operation; and

(4) Recommendation that there be included in the estate, in the event of settlement, provisions for the clearance of existing obstructions and prohibition against future obstructions, provided that circumstances will permit a delay in the acquistion of a clearance easement until completion of the litigation.

(c) *Appraisal reports.* Appraisal reports will be submitted to HQDA (DAEN-REE) WASH DC 20314 after the Department of Justice has determined the date (or dates) of taking. These reports will reflect the ''before'' and ''after'' values of the property, based on the assumption that the United States acquired an easement on that date (or dates).

### § 644.104 Procurement of deed and title assembly.

In any case in which the Court determines that the United States has taken an interest in real property, the Department of Justice will attempt to have included in the findings and in the judgment a precise description of the interests taken. An attempt will also be made to provide in the judgment that payment by the United States will not be required until the plaintiff has delivered a deed or other acceptable conveyance of the interest taken.

(a) *Preparation of instrument.* Upon receipt from the Department of Justice of information as to the nature of the settlement which has been reached, a deed will be prepared, drafted in accordance with § 644.70, covering the estate provided in the judgment.

(b) *Execution and recording of deed.* The Division or District Engineer will obtain proper execution of the deed,

record the same, procure a final certificate of title of a commercial title company or a staff attorney, and obtain a final title opinion pursuant to the provisions of the Delegation to the Department of the Army for the Approval of the Title to Lands Being Acquired for Federal Public Purposes, dated December 4, 1970, and issued by the Assistant Attorney General, Land and Natural Resources Division, Department of Justice. The title assembly and final title opinion should be forwarded to HQDA (DAEN-REA-P) WASH DC 20314, with information copy of transmittal letter to Division Engineer.

(c) *Notification to the Department of Justice.* If the recorded deed and the final certificate of title are not readily available, the Division or District Engineer will notify the Land and Natural Resources Division of the Department of Justice by letter, with a copy to the appropriate United States Attorney, that the deed has been properly executed and delivered by the plaintiff and has been entered for record in order that settlement will not be delayed.

(d) *Disposition of final title assembly, mapping, and audit.* When a final title opinion has been obtained, the Division or District Engineer will assign a tract number to the areas in which the interest has been acquired, will add the tract to the project map, and will transmit the final title opinion and related papers to HQDA (DAEN-REA-P) WASH DC 20314. The tract will be included in the audit of the installation to which it pertains. Audits will be revised for this purpose, if necessary. The amount of the judgment received by the plaintiff will be shown in the audit assembly, with a proper notation that it represents the amount of the judgment entered in the litigation, which will be identified in the audit by its civil number, and by designation of the Court in which it was rendered. A copy or abstract of the judgment will be inserted in the District Office audit assembly, identified as follows:

Directive by judicial decree for the acquisition of Tract No. ; being an easement (or other interest), containing ____ acres.

(e) *Action in lieu of confirmatory deed.* Where a confirmatory deed cannot be obtained, the Division or District Engineer will obtain from the Clerk of the Court a copy of the final judgment (or an appropriately excerpted copy of the final judgment), acknowledged or properly certified to permit recordation in the local land records. The Division or District Engineer will record same and later transmit the appropriate title assembly to HQDA (DAEN-REA-P) WASH DC 20314. If the final judgment does not contain language which clearly vests title in the United States of the interest in land for which compensation was paid, request should be made of the United States Attorney to move the Court to amend the judgment to show that such title has vested.

## ACQUISITION BY CONDEMNATION PROCEEDINGS

SOURCE: Sections 644.111 through 644.121 appear at 44 FR 8184, Feb. 8, 1979, unless otherwise noted.

### § 644.111 General.

Sections 644.111 through 644.121 describe the procedures of the Corps of Engineers relating to the acquisition of real estate and interests therein by condemnation proceedings. It is applicable to the Office of the Chief of Engineers (OCE) and to all Division and District Engineers having real estate responsibilities.

### § 644.112 Applicable statutes in condemnation proceedings.

A complaint in condemnation, and any declaration of taking filed in conjunction therewith, will contain a citation of the congressional authorization and appropriation acts for the particular project, and any other applicable acts of Congress. Existing acts of Congress authorizing the acquisition of land and interests therein are outlined in AR 405–10 and subpart A. Acts of Congress applicable, generally, to condemnation proceedings are outlined below.

(a) *Military projects.* (1) Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257) authorizes the head of any Government department or agency to acquire real estate, otherwise authorized for acquisition, by condemnation proceedings.

(2) Section 2663 of title 10, United States Code, authorizes the Secretary

of a military department to acquire by condemnation any interest in land, including temporary use of the site, construction, or operation of fortifications, coast defenses, or military training camps.

(3) Section 9773 of title 10, United States Code, authorizes the Secretary of the Air Force to acquire by condemnation additional permanent air bases and depots, enlarge existing air bases and depots, bombing and machine gun ranges, and areas for the training of tactical units.

(4) Section 2233 of title 10, United States Code, authorizes the Secretary of Defense (with authority to delegate) to acquire by purchase, lease, or transfer, facilities necessary for the Reserve Components. The authority to acquire by purchase has been held to include the authority to condemn. Therefore, this section authorizes condemnation for both Army and Air Force Reserve Training Sites.

(b) *Civil works projects*—(1) *Rivers and harbors.* (i) Act of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591) authorizes the Secretary of the Army to cause proceedings to be instituted for the acquisition by condemnation of any land, right of way, or material needed to maintain, operate, or prosecute works for the improvement of rivers and harbors for which provision has been made by law.

(ii) Section 5 of the Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that possession of lands being acquired by condemnation proceedings for river and harbor works may be taken, provided adequate provision shall have been made for payment of just compensation.

(2) *Flood control.* (i) Act of Congress approved March 1, 1917 (39 Stat. 950, 33 U.S.C. 701) makes the provisions of the Act of Congress approved April 24, 1888 (paragraph (b)(1)(i) of this section) applicable to flood control works.

(ii) Section 6 of the Act of Congress approved August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c–2) makes the provisions of section 5 of the Act of Congress approved July 18, 1918 (paragraph (b)(1)(ii) of this section) applicable to flood control works.

(3) *Local cooperation.* Acts of Congress approved June 29, 1906 (34 Stat. 632, 33 U.S.C. 592) and August 8, 1917 (40 Stat. 267, 33 U.S.C. 593) provide that the Secretary of the Army may institute condemnation proceedings for the acquisition of land or easement therein for river and harbor works which local interests undertake to furnish free of cost to the United States. The provisions of these Acts were made applicable to flood control works by the Acts of Congress approved March 1, 1917, and August 18, 1941 (paragraphs (b)(2)(i) and (ii) of this section).

(c) *Other pertinent statutes.* (1) Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that the United States shall have the right to take immediate possession of land to the extent of the interest condemned. The exercise of this right is subject, however, to the policy considerations set forth in the Act of Congress appoved January 2, 1971, Pub. L. 91–646 (84 Stat. 1894).

(2) Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) makes provision for the filing of a declaration of taking in conjunction with condemnation proceedings and provides that title to the land or interests in land included in the declaration of taking vests in the United States upon filing with the court and deposit of the estimated compensation in the registry of the court.

(3) Title III of the Act of Congress approved January 2, 1971 (Pub. L. 91–646, 84 Stat. 1894) contains policies and guidelines for acquisition of land.

### § 644.113 Filing of complaint without declaration of taking.

(a) Only in exceptional cases will the Chief of Engineers give favorable consideration to the filing of a complaint in condemnation, and the request for an order of possession, without the concurrent filing of a declaration of taking and deposit of estimated compensation in the registry of the court. Examples of situations in which complaints may be used are as follows:

(1) Immediate possession is required for some essential military need and time does not permit preparation of an appraisal, title work, or negotiations.

(2) Condemnation proceedings are necessary in connection with a cemetery, in order to secure court approval

of the relocation and reinterment plan in accordance with the procedure outlined in ER 1180–1–1.

(3) Where right of entry for survey and exploration, appraisal purposes, or other similar need is required, and there is no material interference with the owner's possession. However, where there is material interference with the owner's possession, or it is considered there will be significant damage to the land, a deposit of estimated compensation may be necessary.

(b) *Approval required.* Prior to submission of a complaint assembly, except in cemetery cases, all pertinent facts justifying the need for such action will be submitted to the Division Engineer for approval. If the proposed action is approved, the Division or District Engineer will inform all affected landowners and tenants of the action being taken, the necessity therefor, and the subsequent procedure to be followed by the Government in conducting negotiations to acquire the land after the filing of the complaint.

(c) *Complaint assembly.* The following assembly will be submitted to HQDA (DAEN-REA-C) WASH DC 20314 where only a complaint is to be filed:

(1) Five copies of individual tract descriptions identified as *Exhibit ''A''.* (Reproduced copies will be accepted if clear and legible.)

(2) Five copies of segment or project maps, showing each tract or area to be acquired shaded or outlined in red and identified as *Exhibit ''B''.*

(3) Five copies of a list of the names and addresses of the persons purporting to own the tracts or having an interest therein, identified as *Exhibit ''C''.*

(4) Five copies of the exact estate or interest to be acquired, identified as *Exhibit ''D''.*

(5) In Air Force projects and acquisitions for other agencies, one additional copy of each exhibit will be required.

(6) In Air Force project acquisitions, the additional information set out in § 644.114(f) will be submitted, in duplicate.

(7) In those jurisdictions that adopt the alternate form declaration of taking, complaint assemblies should be similiar to the schedules submitted for the declaration of taking assembly.

(d) *Letter of transmittal.* Where a complaint assembly is submitted, the letter of transmittal should include the following information:

(1) A statement indicating the date of approval of the Real Estate Design Memorandum in civil works projects or the date of the Real Estate Directive for other projects, and whether the land included in the complaint assembly is within the approved project boundary line, together with the citations of the authorization and appropriation acts which cover the acquisition.

(2) The approved appraised valuation and date of appraisal of the interest to be acquired or, if appraisals have not been prepared, the estimated value with a statement indicating the basis of the estimate.

(3) Information as to whether the land included in the complaint assembly is vacant or occupied, together with the date any occupants will be required to vacate the premises.

(4) If possession is required, an explanation of the need therefor and the reasons why the normal land acquisition schedule was not met.

(5) Results of contacts with the landowners and tenants and their views with respect to the filing of condemnation proceedings.

(6) A statement as to the plan and schedule to acquire such land after filing of the complaint in order to make funds available to the landowners and tenants.

(7) In assemblies concerning land for other than civil works projects, a statement indicating whether all of the land authorized in the Real Estate Directive is included in the assembly. Any variance between the area or estate authorized in the directive and those in the assembly should be fully explained.

(8) In military assemblies, a statement of expected local resistance to the proposed acquisition and efforts made to adjust military requirements to the local situation.

(9) Whether there have been any Congressional inquiries regarding the acquisition.

(e) *Action after filing complaint.* After filing of a complaint proceeding, action to acquire the land involved, either by

direct purchase or by the filing of a declaration of taking, will be completed as soon as possible.

(1) Where a satisfactory Offer to Sell is obtained and accepted, the transaction will proceed through the stages of title clearance, payment and closing. Upon final approval of title, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(2) Where a satisfactory lease of the premises included in a leasehold condemnation proceeding is obtained and accepted, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(3) The recommendation of the Division or District Engineer for dismissal of a tract from condemnation will include the following information:

(i) Name of project.

(ii) Caption of the complaint and civil action number assigned thereto.

(iii) The date the final title approval was rendered; on lease cases, the date the lease was accepted.

(iv) A statement as to whether the particular deed or lease includes the same land described in the complaint under the same tract number.

(v) A statement as to whether the particular deed or lease includes all outstanding interests involved in the complaint insofar as the specific parcel of land is concerned. If all outstanding interests are not covered by the deed or lease instrument, a statement of the proposed method of acquiring those interests which remain outstanding, either by filing a declaration of taking or by direct purchase, or a recommendation that they be left outstanding permanently.

### § 644.114 Acquisition by declaration of taking.

If it has been determined that acquisition of a tract cannot be accomplished by purchase due to failure to reach an agreement with the owners as to value, inability to contact the owners, title defects, or for other reasons, acquisition will be completed by the filing of a declaration of taking in a condemnation proceeding and the concurrent deposit of the estimated compensation in the registry of the court. The requirements for a declaration of taking are set forth in 40 U.S.C. 258a.

(a) *Declaration of taking assembly*. The assembly to be submitted by the Division or District Engineer to the Chief of Engineers, with a recommendation for the filing of a declaration of taking, will contain the following:

(1) Seven copies of the declaration of taking. (Reproduced copies will be accepted if clear and legible). The copy to be executed and filed in court must be free of errors and erasures.

(2) Seven copies of tract descriptions and names and addresses of purported owners, identified as Schedule ''A'' to the declaration of taking.

(3) Seven copies of a segment or project map, showing the individual tracts outlined in red, or shaded in such a way as to identify them, constituting Schedule ''B'' to the declaration of taking.

(4) In acquisitions for Air Force and other agencies, one additional copy of each of the above is required.

(5) As to tracts which are appraised at $50,000 or more, it is necessary to have a least two appraisals for each such tract in condemnation. One copy of each appraisal will be forwarded with the assembly for those tracts valued less than $100,000, and two copies where the value is $100,000 or more. Also, a copy of the appraisal should be forwarded when there is a counteroffer of $50,000 or more, no matter what the appraisal is. In all cases where two appraisals are necessary, at least one will be by a contract appraiser approved in advance by the United States Attorney in whose jurisdiction the case will be filed.

(6) Appraisals must be on a current basis so that at the time of submission of the assembly, the review certificates should indicate that the review has been made within thirty days prior to submission of the assembly.

(7) Guides in preparing declarations of taking for acquisitions for the Departments of the Army (Military and Civil) and Air Force are contained in Figure 5–5 in ER 405–1–12.

(8) Each case where there is an accepted Offer to Sell on which we will

ask the Department of Justice to obtain judgment should be submitted as a separate Declaration of Taking.

(b) *Negotiator's report.* Each declaration of taking assembly should be accompanied by a separate Negotiator's Report, ENG Form 3423 (Parts I and II), in duplicate, for each tract of land included in the assembly. The Negotiator's Report should be current, *i.e.*, it should indicate a contact with the landowner, or his representative, at a time reasonably close to the date of submittal of the assembly, and should reflect that actual, practical and realistic negotiations were conducted in accordance with the procedure set forth in §644.83. The Negotiator's Report should be complete, but should be concise and not made unduly lengthy by extraneous material. It should contain so much of the following information as may be pertinent:

(1) A brief physical description of the property, including its present use and highest and best use claimed by both the Government and the landowner.

(2) Number of discussions and date and place of each discussion, and a statement that the landowner was furnished a summary of the basis for the Government's valuation prior to negotiations.

(3) Statement of each offer made by the negotiator, any counteroffer received from the landowner, and any figures suggested by the negotiator in an effort to obtain a reasonable counteroffer above the Government's estimate of value.

(4) Where the discussions reveal that further negotiations would not be productive, a statement that the real estate representative explained that it was necessary that the interests be obtained through condemnation, not in the sense of a threat, but as an effort on behalf of the Government to secure an impartial determination by the court of the differences of opinion as to value, and in order to make funds available to the landowner.

(5) If the owner cannot be contacted for the purpose of conducting negotiations, a full explanation of the circumstances and the efforts made to contact the owner should be set forth in the Negotiator's Report.

(6) A statement that any remaining property of the owner enjoys access and is an economic unit, or if it is an uneconomic remainder, that the Government has offered to acquire the remainder.

(7) Where there is an Offer to Sell, the Negotiator's Report should include a statement that no separate representations were made in order to obtain the offer, if this was the case. If any such representations were made, they should be fully explained. The report should also include the negotiator's telephone number.

(c) *Letter of transmittal.* The letter of transmittal to be submitted with a declaration of taking assembly will contain the following:

(1) The date of the real estate directive or the date of approval of the real estate design memorandum which includes the land to be condemned, a statement that the land is within the approved project boundary line, and the date of approval of the boundary line.

(2) A statement concerning the availability of funds.

(3) A list of the dates of the appraisals of the tracts in the assembly and the dates of the last review thereof. If more than one approved appraisal exists for any tract, the deposit will be in the amount of the highest approved appraisal. If the value of growing crops has been included in the appraisal, a statement concerning same is required in the transmittal letter pursuant to paragraph (h)(3) of this section.

(4) A statement that all owners of land included in the assembly, whose addresses are known, have been notified in writing that condemnation will be recommended and the reason therefor. The information furnished to the owners should include the name and address of the United States Attorney who will advise and assist them in applying for withdrawal of the funds deposited in the registry of the court. The notice to the owners should also state the date on which possession of their property will be required.

(5) A statement concerning the date when possession of each tract included in the assembly should be obtained. This should include information as to when the 90-day notice was given, as

required by section 301(5) of Pub. L. 91–646 (84 Stat. 1894), or if not required, an explanation as to why not.

(6) In assemblies involving other than civil works projects, a statement as to whether or not all of the land authorized in the real estate directive is included in the proposed declaration of taking. Any variance that may exist between the acreage in the directive and the acreage in the declaration of taking should be fully explained.

(7) For military projects, a statement of the expected local resistance to the proposed acquisition by condemnation, and the efforts which have been made to adjust requirements to the local situation.

(8) For those assemblies involving the first case in a particular project, information as to:

(i) When the initial land acquisition for the project took place.

(ii) The total acreage for the project and the estimate of the cost thereof; if available, two copies of the project brochure furnished to landowners should be forwarded.

(iii) Whether or not an environmental impact statement has been filed, and, if not, when it is expected to be filed.

(9) Two copies of each accepted Offer to Sell covering any of the tracts included in the declaration of taking will be submitted with the assembly.

(10) A statement as to whether there have been any Congressional inquiries regarding the acquisition.

(d) *Title defects.* If a tract is recommended for condemnation due to title defects, three copies of the title opinion will be submitted with the assembly.

(e) *Deposit of funds.* Two copies of the declaration of taking, as finally approved and signed, will be transmitted by the Chief of Engineers to the Division and District Engineer. Procurement and delivery of a check to the United States Attorney for deposit in the registry of the court will be authorized, subject to the availability of funds.

(f) *Additional information to accompany Air Force acquisitions.* Each condemnation assembly (complaint or declaration of taking) covering the acquisition of land for an Air Force project will include the following information and material, in duplicate:

(1) A map showing the base boundaries, outlining in red all land included in the applicable real estate directive, and showing the land included in the condemnation assembly hachured in red. In the case of an off-base facility, the map will show the nearest boundary of the main base with relation to the off-base facility, outlining in red all land in the applicable real estate directive, with the land covered by the condemnation assembly hachured in red.

(2) On the same map or a larger scale map, the following information on each tract in the applicable real estate directive:

(i) Tract number.

(ii) Acreage.

(iii) Ownership.

(iv) Contours.

(v) Existing improvements.

(vi) Proposed construction, including utilities, drainage ditches, and other supporting facilities.

(3) Summary of status of acquisition of all land included in the applicable real estate directive. ENG Form 3905–R will be used for this purpose. All discrepancies in figures for acreages and costs should be fully explained.

(4) If any of the land included in the applicable real estate directive is held under voluntary lease or leasehold condemnation, report for each such tract the annual rental, the period of time the leasehold interest has been held, and whether it is a voluntary lease or a condemnation leasehold. If the land is not under lease, this fact should be reported.

(5) If the United States has previously acquired an easement interest (clearance easement, safety area easement, etc.) in any of the land included in the condemnation assembly, identify the real estate directive which authorized the previous acquisition by number, date, interest acquired, acres, cost and method of acquisition (including lease number, tract number, caption with civil action number as applicable). A negative report is required.

(6) If severance damage is involved in any of the land included in the condemnation assembly, include a detailed statement of the facts and justification

for the severance allowed, unless the severance damage has been adequately explained in a Real Estate Planning Report or a Real Estate Requirements Estimate, in which case such Report or Estimate should be identified for reference.

(7) A copy of the appraisal report on which the deposit in a declaration of taking is based, irrespective of value.

(g) *Interests included in declaration of taking.* (1) The estate recommended for use in a declaration of taking should conform to the estate approved by the Chief of Engineers in Civil Works projects and to the applicable directive in military and other agency projects. Any deviation should be fully explained and justified in the transmittal letter. Examples of estates which have been approved for use in declarations of taking are contained in Figure 5–6 in ER 405–1–12. A condemnation proceeding is an in rem action. The definition of ''property'' and what constitutes property is generally determined by reference to State law. Therefore, full consideration should be given to the applicable State law in connection with requests for deviations from the standard approved estates.

(2) Normally, under the ''unit'' rule a condemnation proceeding should include all interests in a given tract authorized for acquisition even though an Offer to Sell may have been obtained and accepted from the surface owner with an outstanding interest in the subsurface estate recited in the ''Subject to'' paragraph. In such a case, if it is necessary to condemn due to title difficulties or failure of the owner to carry out the terms of the Offer to Sell, the deposit will be increased by the appraised value of the outstanding subsurface interest. The only exception to including subsurface interests outstanding in third parties is in the case of block ownership of subsurface interests; *i.e.*, where a person, corporation, or other entity owns subsurface interests under more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface interests need not be contiguous to constitute a block ownership.

(3) If future negotiations to acquire or subordinate the subsurface interests left outstanding under paragraph (g)(2) of this section (or any non-block subsurface interests ''excepted'' from direct purchase cases) are unsuccessful, and the outstanding interest cannot be waived under the provisions of § 644.86, then acquisition or subordination of the outstanding interest should be accomplished by condemnation proceedings. In so doing, block ownerships should be condemned as a unit rather than on a piecemeal basis. Full information should be submitted with such assemblies as to the method of acquisition of each surface ownership affected by the subsurface acquisition.

(h) *Payment for crops.* At the time the declaration of taking assembly is prepared, it will be necessary that a determination be made as to whether the value of growing crops should be added to the value of the land improvements in determining the amount to be deposited as estimated compensation. The determination will be made as follows:

(1) If the crops have been harvested, or it is known or highly probable that the crops will be harvested by the landowner or tenant, no deposit will be made for the crops.

(2) The approved appraised value of crops will be included in the amounts to be deposited in all other cases.

(3) The letter forwarding the declaration of taking to the Chief of Engineers will state whether the value of growing crops has been included in the amount recommended for deposit, and will set forth a statement of the facts upon which the action is based.

(i) *Filing and possession.* Upon the filing of a complaint, accompanied by a declaration of taking, the court has the power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the United States (40 U.S.C. 258a). Requests for orders of possession should be made only after all requirements of Pub. L. 91–646 (84

Stat. 1894) regarding possession have been satisfied.

(1) The Division or District Engineer will ascertain from the United States Attorney the date on which the condemnation proceeding with declaration of taking is filed and the date on which possession is available. The using service of the Army and Air Force or the local representative of other agencies will be informed of the date on which possession of the land is available.

(2) The above information, together with the civil number assigned to the case, and a copy of the complaint and order of possession will be furnished to HQDA (DAEN-REA-C) WASH DC 20314 within six weeks after the date the case was forwarded by the Chief of Engineers to the Department of Justice. If this cannot be accomplished, an explanation will be furnished by such date.

(3) Where an Order of Possession is obtained but the landowner refuses to comply, it may be necessary to obtain a Writ of Assistance from the court. Prior to requesting the United States Attorney to obtain such a Writ, all pertinent facts should be reported to DAEN-REA-C.

(4) The United States Attorney should be requested to have judgment entered in accordance with the terms of any accepted Offers to Sell immediately after the filing of the case, since delay in taking such action works to the disadvantage of the Government. Any difficulty in securing prompt action by the United States Attorney in this matter should be reported to DAEN-REA-C.

(j) *Amendments.* (1) If at any time it becomes necessary to amend a complaint or declaration of taking previously filed, an amendment assembly will be submitted to DAEN-REA-C together with a full statement of the facts requiring the amendment. The letter of transmittal should certify that the tracts affected by the amendment have not been adjudicated.

(2) No amendment should be submitted which will result in a revestment of an interest in property, unless a stipulation for revestment has been obtained from the former owner in accordance with § 644.115.

(3) If, after the filing of a declaration of taking, a substantially higher appraisal is approved for any reason, and a settlement does not appear imminent, an amendment will be submitted promptly to increase the amount of the deposit.

(k) *Alternate form declaration of taking.* An alternate form of Declaration of Taking has been approved by the Judicial Conference on an optional basis, and must be used where the local District Court requires. Under this form a Declaration of Taking may have up to 15 ownerships, but each ownership will be set up separately so that it may be included in a separate civil action. In other words, there may be up to 15 separate civil actions which are keyed in to one Declaration of Taking. An example of this type of Declaration is included in Figure 5–5 in ER 405–1–12. In this form, Schedule ''A'' will include the authority and public uses. Schedule ''B'' will include the description, the estimated compensation, and the estate to be acquired. Schedule ''C'' will be the plan showing the land to be acquired. It will be noted that there will be a separate Schedule ''A'', ''B'', and ''C'' for each ownership. The schedules may include more than one tract where the ownership is unified and is an economic unit. All of the civil actions will be keyed in to the Declaration of Taking by a Master File number. The Master File number must be used on all correspondence pertaining to tracts in this type of an assembly.

### § 644.115 Revestment of title by stipulation.

When fee title or an interest in property has been acquired by the United States by declaration of taking in a condemnation proceeding and it is determined to be in the best interest of the Government to wholly or partially exclude said property or interests therein, or to acquire a lesser estate, such exclusion or diminution in the estate can be accomplished by stipulation with the former owner under the provisions of the Act of Congress approved October 21, 1942 (40 U.S.C. 258f).

(a) *Required approval.* All stipulations involving a revestment of title must be forwarded to DAEN-REA-C for approval with a full statement of the

facts, related data and recommendations. Approval of the revestment action must be obtained from the appropriate using agency. Such stipulations will not be filed in the condemnation proceedings by the United States Attorney until the specific approval of the Chief of Engineers is obtained and the matter coordinated by the Chief of Engineers with the Department of Justice. It should be stressed in negotiations that final approval of the stipulation is under the judrisdiction of the Attorney General, based on the recommendation of the Chief of Engineers.

(b) *Reduction of price.* A stipulation for revestment should provide for a deduction from the agreed price or from the ultimate award of an amount equal to the difference between the value of the property originally taken and the value of said property after the proposed exclusion of a part thereof or acquisition of a lesser interest therein, *i.e.*, the stipulation should be an overall settlement of the case whenever possible. If it is impossible to reach an amicable agreement for complete settlement for the Government's acquisition of the tract, an agreement as to the area and estate, leaving final determination as to compensation with the court, may be submitted with facts showing that the proposed action is in the best interest of the Government. The stipulation should also include a release concerning any benefits under section 304, Pub. L. 91–646 (84 Stat. 1894), because of the revestment, particularly when no agreement is reached concerning compensation.

(c) *Required information.* A sample stipulation for revestment is contained in Figure 5–8 in ER 405–1–12 which may be adapted to fit the particular project and tract involved. In this connection, the following requirements should be observed:

(1) The stipulation will not provide for any change in the amount of the deposit unless the stipulation provides for an overall settlement of the case or the entire tract is to be excluded from the acquisition.

(2) The areas in which the Government has acquired an interest and those in which an interest will be retained after the revestment will be fully described.

(3) The estates to be retained by the Government after the revestment will be accurately described; where the owner reserves mineral or other interests or use, appropriate restriction of exploration and subordination to the paramount right of the Government to use the property for the required purpose will be included.

(4) The stipulation should include, as part of the consideration:

(i) Consent by the former owner to the Government's acquisition of the revised area and the estates therein in the event the stipulation is approved.

(ii) Withdrawal of any answer contesting the Government's right to acquire the property and any interrogatories theretofore filed.

(iii) A waiver of any and all claims by the former owner, his heirs and assigns, against the United States, the State, County and political subdivisions thereof for loss of access to the land (where applicable).

(5) The stipulation will include, as an exhibit, maps delineating the fee area in red, the easement area in blue, and the area to be revested in yellow.

(6) The letter of transmittal in connection with any revestment in Civil Works projects should include information as to whether the area in which title is to be revested has a potential for recreational use without regard to the currently established public access areas.

(d) *Application.* The foregoing procedure applies only to instances where a declaration of taking has been filed. Where only a complaint has been filed, the necessary revisions may be made by securing a satisfactory Offer to Sell and deeds to the United States, or by amending the complaint and filing a declaration of taking containing the revised descriptions or estates.

### § 644.116 Distribution, reservations, and title evidence.

Distribution of the estimated compensation deposited in the registry of the court is the responsibility of the United States District Court. However, the Division or District Engineer will assist the United States Attorney in arranging for the distribution of funds

deposited with a declaration of taking in order that landowners may receive either partial or total payment as soon as possible.

(a) *Distribution.* Partial or total distribution may be made upon a showing to the court that the claimant is the proper person to receive the money on deposit (40 U.S.C. 258a). An examination of the title evidence by the United States Attorney, together with a physical inspection of the premises, is usually sufficient to enable the United States Attorney to ascertain the proper claimants so that he may consent to the entry of an order of distribution. Distribution may be made without prejudice to the owner's right to contest for a higher award than the sum deposited by the United States.

(b) *Inspection and title evidence.* As soon as a condemnation proceeding is filed, a physical inspection of the premises will be made and the United States Attorney will be furnished the following:

(1) ENG Form 798, Certificate of Inspection and Possession, or such other similar form as may be requested.

(2) ENG Form 1567, Report on Vacation of Property.

(3) Title evidence and all available curative material covering the tracts of land included in the declaration of taking.

(4) Copies of all offers to Sell, leases, relocation agreements, etc., which are pertinent to the case and would be useful in making distribution.

(c) *Reservations.* If the landowners are to be permitted to remove crops, timber, buildings or other improvements from land acquired in the declaration of taking (by approval of the Division or District Engineer), a stipulation for reservation of these items may be obtained at this time. The stipulation should be in a form acceptable to the United States Attorney, should specify the date on or before which the reserved items are to be removed, and should provide that if the reserved items are not removed on or before said date, the right of removal shall terminate automatically and the United States shall have a good and indefeasible title to these items without further notice. The consideration to the Government for the reservation will be in an amount not less than the appraised value of the crops, or not less than the appraised salvage value of the timber, buildings or other improvements which are reserved, and the stipulation should provide that such amount shall be deducted from the amount of the final award.

(d) *Continuation of title evidence.* A continuation of the existing title evidence will be obtained to include a search of the records to a date subsequent to the date of filing of the Notice of Lis Pendens, the Judgment on Declaration of Taking, or the filing of the complaint in those states where such filing constitutes notice. The additional title evidence will be furnished to the United States Attorney as soon as possible after filing of the case.

### § 644.117 Procedure prior to trial.

(a) *General.* After filing of condemnation proceedings, the Division or District Engineer will maintain close liaison with the United States Attorneys and will render all possible assistance to the United States Attorneys in negotiating settlements, preparing cases for trial, and in conducting such trials. When the Division or District Engineer is informed that a case has been set for trial involving an unusual or novel issue of fact or law, or where the Government testimony will be $100,000 or more, he will promptly furnish this information to DAEN-REA-C. In addition, the Division or District Engineer should:

(1) In coordination with the United States Attorney, conduct discussions for settlement with landowners and other interested parties defendant. When a satisfactory agreement has been reached, an executed stipulation in a form satisfactory to the United States Attorney will be obtained. A suggested form of stipulation as to just compensation is contained in Figure 5–8 in ER 405–1–12. In this connection, the closest cooperation and collaboration must exist between representatives of the Department of the Army and the Department of Justice; no settlement negotiations should be conducted by Corps personnel without the knowledge

and consent of the United States Attorney. If the property owner is unwilling to execute a stipulation until assured that the amount of the settlement will be accepted by the Government, formal execution of the stipulation may, in such instances, be delayed. However, the offer will be processed in accordance with the applicable provisions of paragraph (b) of this section.

(2) Furnish maps, photographs and other necessary exhibits for trial.

(3) Assist in preparing expert witnesses for trial.

(4) Take necessary action to assure the presence of witnesses at the trial. District personnel who qualify as expert witnesses will be made available.

(5) Be represented at the trial by an attorney thoroughly familiar with Federal court procedures, condemnation law, and the details of the project affected by the condemnation proceedings.

(b) *Stipulated settlements.* (1) Where the amount of the stipulation obtained in accordance with paragraph (a)(1) of this section does not exceed the high, approved appraisal prepared by an appraiser employed by, or under contract with, the Corps of Engineers, and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, approval of the settlement will be recommended by the Division or District Engineer or the Chief of the Real Estate Division directly to the United States Attorney. The Division or District Engineer will inform DAEN-REA-C of the action taken, either by sending a copy of the letter addressed to the United States Attorney of by separate correspondence.

(2) Where the total settlement for all interests acquired in a given tract does not exceed $40,000 and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, Division and District Engineers and the Chiefs of the Real Estate Divisions are also authorized to recommend approval of settlements directly to the United States Attorney. In leasehold condemnation cases the monetary limitation includes the full lease term and not merely the per annum rental. DAEN-REA-C will be informed of the action taken in the same manner as in paragraph (b)(1) of this section. Even though the total settlement for all interests acquired in a given tract does not exceed $40,000, the proposed settlement will be submitted to DAEN-REA-C for consideration in the following instances:

(i) If the United States Attorney and the Division or District Engineer cannot agree as to whether a particular settlement should be consummated.

(ii) If the stipulation involves a novel issue of law or question of policy which would adversely affect the disposition of other tracts in a project.

(iii) If revestment of any land or interests therein or change in estate is involved.

(3) All proposed settlements not covered by paragraphs (b) (1) and (2) of this section will be forwarded to DAEN-REA-C, together with specific recommendations of the Division and District Engineers and a full statement of the facts. Three copies of the signed stipulation will be forwarded to DAEN-REA-C with the report in those situations where the stipulation contains any unusual conditions or terms. The report should contain the following:

(i) The amount of the deposit and the amount of the proposed settlement.

(ii) The amounts and dates of all Government appraisals. Where the Department of Justice appraisal is substantially above or below the Corps of Engineers' appraisals, the Division and District reviewing appraisers should carefully examine the appraisals and ascertain whether the facts in the case and the appraisal techniques have been consistently applied, and should prepare a comparative analysis.

(iii) The appraisal valuations by the property owners, their appraisers, or other witnesses who may testify for the owners, if such can be ascertained.

(iv) A statement of the recommendation of the United States Attorney as to the proposed settlement.

(v) Such other matters as should be considered by the Chief of Engineers in determining whether the proposed settlement is satisfactory; e.g., any pattern of awards which has been established as the result of other trials concerning land at the same project, or in

the same Federal judicial district, disposition of any accepted Offer to Sell, any unusual legal or factual issues involved, any unusual factors which would increase the hazard of proceeding to trial, or the anticipated effect of the settlement on remaining acquisition in the project.

(vi) Whether or not funds are available to satisfy any deficiency.

(vii) The report should contain the required information in tabulated form. For each item the statement should be short and concise; lengthy reports are not required.

(4) A copy of the report and recommendation sent to the Chief of Engineers will be immediately transmitted to the United States Attorney. If the settlement is satisfactory, the Chief of Engineers will forward a letter of approval to the Department of Justice, recommending that the stipulation be approved, filed and judgment entered thereon. A copy of the letter of approval will be sent to the Division or District Engineer. Receipt of such copy is authority to satisfy the judgment when entered, provided funds are available.

(5) If a stipulation is obtained by a United States Attorney in excess of their authority, they will forward the proposed settlement to the Department of Justice. Simultaneously, in accordance with procedures agreed upon by the Chief of Engineers and the Department of Justice, the United States Attorney will transmit copies of the transmittal letter and of the proposed stipulation to the Division or District. The Division or District Engineer will immediately forward the letter outlined in paragraph (b)(3) of this section to the Chief of Engineers.

(6) All settlements negotiated for interests acquired in condemnation proceedings will be inclusive of interest and will include all claims of any nature arising as a result of the taking of the estate recited in the complaint or declaration of taking, with the exception of benefits to which the landowner may be entitled under Pub. L. 91–646 (84 Stat. 1894). In lease-hold condemnation cases, all proposed settlements should include not only an agreement as to compensation for the period of the leasehold but also an agreement as to any and all claims arising from restoration of the premises, if known (§ 644.121(b)).

(7) Where surface and subsurface interests are acquired in a single condemnation proceeding, it is desirable to settle by stipulation, or to go to trial, on the ''unit'' basis. Many United States Attorneys insists on this course of action. However, Division or District Engineer should cooperate with United States Attorneys who wish to negotiate for stipulated settlements which may not include all of the interests acquired in a given proceeding as to a specific tract or tracts, provided appraisal reports have been prepared in such a manner as to make the appraised value of the several interests ascertainable.

(8) If an offer of settlement is not intended to include the full interest which was condemned in a particular tract, the letter transmitting the settlement offer will specifically identify the interests included in the settlement, the interests which remain unsettled, and the amount of estimated compensation remaining on deposit for the unsettled interests. The amounts remaining on deposit for the unsettled interests should be the appraised valuation of such interests.

(9) Landowners will be advised during negotiations for settlement that offers to settle are not binding on the United States until accepted by a duly authorized representative of the Department of Justice.

(10) In cases where tracts which are covered by accepted Offers to Sell are acquired by declaration of taking because of title defects or the failure of the landowner to carry out the terms of the Offer to Sell, the United States Attorney will be informed by letter and furnished copies of the Offer to Sell. The consideration contained in the Offer to Sell is considered binding upon the landowner despite the fact that condemnation is used to acquire title to the land. No settlement will be approved by the Division or District Engineer in an amount exceeding the amount contained in the Offer to Sell unless the Offer has been set aside by court order. Reports submitted in accordance with paragraph (b)(3) of this section will contain a statement as to

the status of any Offer to Sell which may have been accepted.

(c) *Appraisal review.* Land and Natural Resources Division Directive No. 11–68, dated 22 November 1968, provides that where two or more appraisals for a particular property have a valuation spread in excess of 10 percent of the high appraisal figure, the United States Attorney should submit such appraisals to the local representative of the Corps for approval. Every effort should be taken to see that this policy is followed so that the Corps has full knowledge of the appraisal reports on which settlement negotiations or trial preparation is based. In those instances where the United States Attorney and the Division or District Engineer cannot agree as to whether an appraisal or appraiser should be used at trial or in connection with settlement negotiations, copies of all appraisals, together with the analysis of the reviewing appraiser, should be submitted to HQDA (DAEN-REE) WASH DC 20314 for further consideration and possible discussion with the Department of Justice.

### § 644.118 Awards.

(a) *Approval by Division or District.* Division or District Engineers and the Chiefs of the Real Estate Divisions have been authorized to approve court awards (including jury or commission awards) where such awards do not exceed the highest testimony presented at the trial by a qualified appraiser employed by the Government. In such cases, the United States Attorney will be notified that the award is approved and the Chief of Engineers will be notified of such action.

(b) *Approval by Chief of Engineers.* (1) If the award is in excess of the highest testimony presented at the trial by a qualified appraiser employed by the Government, or involves a matter of a doubtful or controversial nature, a report concerning the trial will be forwarded by the Division or District Engineer to DAEN-REA-C. The report should contain, but not be limited to, the following information:

(i) The amount of the verdict or award.

(ii) The appraisal valuations given in testimony by all witnesses, including any pertinent comments on the effectiveness of the witnesses, as appropriate.

(iii) A statement of the recommendations of the United States Attorney as to the acceptance of the verdict or award, if available without causing a delay in submittal of the report.

(iv) Where the trial concerned less than all interests acquired in a given tract, the report should state the precise interests adjudicated at the trial, the other interests which remain unadjudicated, the proposed disposition of the unadjudicated interests and the amount of the deposit allocated to the unadjudicated interests.

(v) Whether or not funds are available to satisfy any deficiency plus interest.

(2) Long narrative reports of the events at the trial or hearing are not necessary except in unusual cases. A brief, but complete, statement of the pertinent facts will be adequate in most cases. A form for use in connection with submission of trial reports is included in Figure 5–9 in ER 405–1–12; however, it is not intended that this form constitute the entire report. Where the case was tried by a Commission, copies of the Commissioners' Report will be submitted with each copy of the trial report. Close liaison must be maintained with the United States Attorney's Office in order that these reports will be received promptly after they are filed in the case.

(3) The report outlined above should be accompanied by the recommendation of the Division or District Engineer as to what action should be taken with respect to the Commissioner's Report, court award or jury verdict. This recommendation should include a discussion of any matters which should be considered by the Chief of Engineers in determining whether the award is satisfactory, e.g., the history of past awards at this project or in the same judicial district, the basis used by the commission in arriving at its determination of value, whether enhancement from the project or a second taking was an issue, the disposition of any accepted Offer to Sell on any tract involved in the trial, etc. (The basis of findings of value to be included in the report of a commission appointed under Rule 71A(h) was considered by

the Supreme Court in *United States* v. *Merz*, 376 U.S. 192). Where the recommendation is to reject the award, specific reasons with supporting legal analysis should be given. The fact, standing alone, that an award is considered excessive is not sufficient reason upon which to base an appeal.

(4) The report and recommendation should be received by the Chief of Engineers within five working days after the Commissioners' Report has been filed or the trial concluded. In order to accomplish reporting within the prescribed time limits, District Engineers will forward reports and recommendations direct to DAEN-REA-C, with a copy to the appropriate Division Engineer. The Division Engineer will submit comments and recommendations to DAEN-REA-C within three working days after receipt of the copy of the District Engineer's report. The District must insure that our right to object is extended if the situation warrants.

(c) *Payment of awards and settlements.* (1) If an award or stipulated settlement requires the deposit of a deficiency, judgment will be entered by the court and thereafter transmitted to the Division or District Engineer by the Department of Justice for procurement of a check for deposit in the registry of the court in satisfaction of the final judgment.

(2) The copy of the letter from the Chief of Engineers to the Department of Justice recommending approval of an award or settlement, if required under §§ 644.117(b)(3) and 644.118(b), will constitute authority for payment of the deficiency, provided funds are available. If approval is not recommended by the Chief of Engineers to the Department of Justice and the judgment is submitted to the Division or District Engineer for payment, it should be forwarded to DAEN-REA-C without action. Upon receipt of a judgment where payment is authorized and funds are available, the Division or District Engineer will immediately procure and deliver the check to the United States Attorney and inform DAEN-REA-C of the action taken.

### § 644.119 Procedure after final judgment.

Generally, it is not necessary to obtain a final certificate of title or title insurance policy in condemnation cases where the intermediate or continuation certificate of title is continued to a date subsequent to the date of filing of the Notice of Lis Pendens, and the liability of the title company is not limited to an amount less than 50 percent of the total consideration paid for the land by the United States.

(a) *Final title opinion.* After entry of final judgment, the title assembly will be examined and a final title opinion issued. The title opinion and related papers on Army and Air Force projects will be forwarded to HQDA (DAEN-REP) WASH DC 20314 for permanent filing.

(b) *Report required to close case.* When all interests in a proceeding have been disposed of by final judgment, the Division or District Engineer will so advise the Chief of Engineers in order that the case may be closed. This report should not be made until the time for appeal has expired or any pending appeals have been resolved. The report should include a copy of the final judgment or other order of the court disposing of the case, and a statement that all monies deposited in the registry of the court have been disbursed.

### § 644.120 Condemnation for local cooperation projects.

Under the provisions of the River and Harbor Acts approved June 29, 1906 (33 U.S.C. 592) and August 8, 1917 (33 U.S.C. 593), and the Flood Control Acts approved March 1, 1917 (39 Stat. 950) and August 18, 1941 (33 U.S.C. 701c–2), respectively, the Secretary of the Army may cause proceedings to be instituted in the name of the United States for acquisition by condemnation of lands, easements or rights-of-way which local interests undertake to furnish free of cost to the United States. Requests for the institution of proceedings in the name of the United States will be addressed by the local parties to the Secretary of the Army and submitted to the Division or District Engineer. No land will be acquired on behalf of local interests by the filing of condemnation proceedings until local interests have

furnished the Division or District Engineer with satisfactory assurances in accordance with the authorization act, and sufficient funds have been deposited with the Division or District Engineer to pay the expenses of the proceedings and any awards that may be made in the proceedings.

(a) *General.* The Corps of Engineers will institute condemnation proceedings on behalf of a local interest only when the local interest:

(1) Lacks authority to acquire the necessary real estate interests by eminent domain; or

(2) Cannot obtain possession by local eminent domain proceedings in time to meet the construction schedule; or

(3) Unusual circumstances exist so that acquisition by local inerests would not be in the best interest of the United States.

(b) *Information to accompany assembly.* Upon request of the local interests that the real estate interest be acquired by condemnation proceeding in the name of the United States, the Division or District Engineer will transmit to HQDA (DAEN-REA-C) WASH DC 20314 an appropriate condemnation assembly, prepared in accordance with §644.114, with recommendations and the following information:

(1) Citation of authorizing act.

(2) Whether valid assurances have been accepted, giving date of acceptance.

(3) That the estate or estates to be acquired conform to the requirements set forth in subpart J (to be published).

(4) Appraisal values of the interest proposed for acquisition.

(5) That sufficient funds to cover court awards and expenses of the proceedings have been deposited by local interests with the Division or District Engineer.

(6) Efforts made by local interests to acquire the real estate interests and reasons for requesting the United States to file condemnation proceedings.

### §644.121 Leasehold condemnation requirements.

(a) *Requirements for extension.* The interest acquired in land by a leasehold condemnation proceeding terminates after a one-year term, unless notice to extend the term is filed in the appropriate United States District Court. In all leasehold cases, the Division or District Engineer will ascertain from the using service whether the premises included in such condemnation proceedings will be required for an additional term. This should be done sufficiently in advance of the end of the term to allow adequate time for the action necessary to extend the term. These instructions apply to civil works projects as well as military projects.

(1) The Department of the Air Force will ascertain and advise the Chief of Engineers concerning the future requirements for the land in Air Force leasehold cases. Where the Department of the Air Force has a continuing requirement for land included in condemnation leasehold cases which are not extendible, the appropriate Division and District Engineers will be informed at the earliest practicable date.

(2) Extension of the term in a leasehold condemnation case must be accomplished through the Department of Justice which, upon request of the Chief of Engineers, will issue instructions to its field representatives to prepare a notice of election to extend the term and file it in the appropriate United States District Court. The Chief of Engineers should be advised of requirements of using services for extension of leasehold condemnation cases five months prior to the time that filing notice of extension with the court is due. The majority of pending leasehold condemnation cases require that notice to extend the term be filed with the court 30 days prior to the end of the term, although a few cases require the notice of extension to be filed at least 60 days prior to the end of the term. Negative reports are required.

(3) Since the General Services Administration is the disposal agency for excess and surplus airport property, all condemnation leaseholds forming an integral part of an airport should be extended and kept in force with the concurrence of the Department of the Air Force unless and until contrary instructions are received from the General Services Administration. In the event a bombing range or other installation in which leasehold interests have been acquired by condemnation is

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

(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

Real Property, will be used. An attempt should be made to include a provision in the option giving the Government the right to acquire all or part of the land covered by the option where the land held in a single ownership can be separated into definable parcels and the possibility exists that, as planning is developed, the entire tract will not be required.

(2) The following instructions for the use of ENG Form 2926 will be followed:

(i) Insert amount to be paid for the option privilege. This amount cannot exceed five percent of the appraised value.

(ii) If the land has been separated into definable parcels in accordance with paragraph (d)(1) of this section, the option should describe each parcel and provide for a separate purchase price inclusive of any severance damage, as well as an agreed purchase price for the entire tract. The amount to be paid for the option privilege will be apportioned among the separate parcels.

(iii) The expiration date of the option on unauthorized projects should be far enough in advance to permit the insertion of a land acquisition line item in the next available budget; enactment of legislation; apportionment of funds by the Office of Management and Budget; clearance within the Department of Defense; clearance with the Committees on Armed Services of the Senate and House of Representatives, if required; issuance of a real estate directive; and allotment of funds.

(iv) Since options obtained under this section will normally be recorded, ENG Form 2926 will be acknowledged in the form used in the jurisdiction in which the real property is located.

(e) *Report.* When all options within the approval area have been acquired, and prior to their being exercised by the Government, a report will be made to HQDA (DAEN-REA-L) WASH DC 20314 including, but not limited to, the following items:

(1) Project identification.

(2) Directive authorizing acquisition of options.

(3) Number of tracts optioned.

(4) Expiration date of options.

(5) Total acreage optioned.

(6) Total amount to be paid if options are excercised.

(7) Total amount paid for option privilege.

(8) One copy of each option.

(9) One copy of each appraisal.

### § 644.168 Exercise of options.

Upon issuance of a real estate directive for acquisition of the optioned real property, the District or Division Engineer will exercise the option and proceed with the acquisition in accordance with the procedures outlined in §§ 644.61 through 644.88.

## Subpart D—Relocation Assistance Program

### § 644.175 Cross Reference.

See part 641 of this chapter for the regulations on the relocation assistance program.

[44 FR 3212, Jan. 15, 1979. Redesignated at 44 FR 35219, June 19, 1979]

## Subpart E [Reserved]

## Subpart F—Disposal

SOURCE: 45 FR 71266, Oct. 27, 1980, unless otherwise noted.

### § 644.311 General.

Subpart F sets forth general authority, responsibilities, procedures, methods, and guidance for the performance of real property disposal functions.

### § 644.312 Applicability.

Subpart F is applicable to Division and District Engineers having real estate responsibilities.

### § 644.313 Authority.

The major portion of real property disposal actions performed by the Corps of Engineers is predicated on authority derived from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*), hereinafter referred to as the Federal Property Act, and the rules, regulations and delegations of authority issued by the General Services Administration (GSA) thereunder. Other authorities relating to the disposal of military real property are found in AR 405–90. The Army and Air Force Basic

Real Estate Agreements covering disposal of Air Force real estate are found in AR 405–5 and AFR 87–15.

### § 644.314 Rules and regulations of the General Services Administration (GSA).

Under the rules, regulations and delegations of authority issued by GSA under the Federal Property Act, the military departments are authorized to dispose of the following:

(a) Real property under its control (except land withdrawn or reserved from the public domain), together with the improvements thereon and related personal property, which has a value of less than $1,000.

(b) Leases, permits, licenses, easements, or similar interests, including Government-owned improvements on the premises, unless it is determined that the interest should be included with the disposal of other property being reported to GSA for disposal.

(c) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

(d) Standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land.

### § 644.315 Disposal priorities.

Consistent with the best interest of the United States and with applicable laws and regulations, the following priorities should be followed in disposing of real property no longer needed by the Departments of the Army and Air Force:

(a) Transfer to other Department of Defense agencies and the U.S. Coast Guard.

(b) Transfer to other Federal agencies.

(c) Conveyance to eligible non-Federal agencies.

(d) Sale to the public.

### § 644.316 Environmental considerations.

The National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 *et seq.*) directs that a five point Environmental Impact Statement (EIS) be prepared, circulated among interested Federal, State and local agencies, and filed with the Environmental Protection Agency (EPA) before a major Federal action is taken which affects the quality of the human environment. This may include some disposals. No major disposal action will be undertaken where the Corps of Engineers is the disposal agency, or is acting for the disposal agency, until the required EIS has be submitted to the EPA unless a ''Finding of No Significant Impact'' (FONSI) has been prepared for the action, or if the action is classified as a ''categorically excluded'' item because it has no significant effect on the environment. The Environmental Assessment is subject to review and approval in accordance with instructions found in AR 200–1 and AR 200–2 (to be printed) for military real property disposal, and the forthcoming Engineer Regulation for civil works real property disposal. Where property is reported to GSA for disposal, GSA is responsible for compliance with NEPA.

### § 644.317 Preserving historic landmarks and properties.

Purposes of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470) and Executive Order 11593, Protection and Enhancement of the Cultural Environment (13 May 1971) will be set forth in subpart H (to be published) and the authorities there cited also apply to the disposal of real property. Specific policy guidance in connection with disposals having historic significance is published in AR 200–1 and AR 405–90 for military real properties and in ER 1105–2–460 for civil works real properties.

(a) The Criteria of Adverse Effect on eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property.

(2) Isolation from or alteration of the property's surrounding environment.

(3) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

(b) It is normally intended that the agency responsibilities under Section 106 of the National Historical Preservation Act of 1966 and Executive Order 11593 run concurrently with the NEPA review process. However, obligations pursuant thereto are independent from

NEPA requirements and must be complied with even when an environmental impact statement is not required.

### § 644.318 Compliance with State Coastal Zone Management Programs.

Subpart H will outline the provisions of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*). These provisions also apply to the disposal of land or water resources when the action is subject to the Federal consistency requirements of the Act and when the disposal is consistent with an approved state management program.

### § 644.319 Protection of wetlands.

The requirements of Executive Order 11990, Protection of Wetlands, 42 FR 26961, (24 May 1977) are applicable to the disposal of Federal lands and facilities, and the policy and procedures implementing the Order will be set forth in subpart H (to be published).

### § 644.320 Floodplain management.

The requirements of Executive Order 11988, Floodplain Management, 42 FR 26951, (24 May 1977) and its implementation will be outlined in subpart H (to be published). In accordance with ER 1165–2–26, paragraph 13, when civil works property in floodplains is proposed for disposal to non-Federal public or private parties, the Corps of Engineers shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate.

### § 644.321 Nondiscrimination covenant.

As required by Section 101–47.307–2 of the Federal Property Management Regulations (FPMR), substantially the following covenant will be included in all deeds or other disposal instruments to public bodies when the sale is negotiated under section 101–47.304.9(4) of the FPMR:

> The grantee convenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that said grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, age, sex, handicap, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. The convenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this convenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

### § 644.322 Disposition of proceeds from disposal.

(a) *Land and Water Conservation Fund.* Except as provided in paragraphs (b) and (c) of this section and unless otherwise obligated by existing or future acts of Congress, all proceeds received from any civil works project disposal of surplus real property or related personal property under the Federal Property Act, shall be covered into the land and water conservation fund in the Treasury of the United States (16 U.S.C. 460L–5(a), FPMR Section 101–47.307–6). This includes the net proceeds from the sale of timber and structures.

(b) *Department of Defense Family Housing Management Account.* Section 501(b) of Pub. L. 87–554, as amended, 42 U.S.C. 1594a–1, provides that the proceeds from the disposal of family housing of the Department of Defense, including related land and improvements, shall be transferred to Family Housing Management Account, Defense. This does not include civil works housing, or houses on land acquired for military purposes unless the housing was specifically acquired to house military personnel. This means that excess military family housing and related land and improvements should be reported to GSA on Standard Form 118 separate and apart from Reports of Excess for other portions of an excess installation. Particular care should be taken to ensure that the following statement be included in each such report of excess to GSA:

> Net proceeds from the sale of family housing, including related land and improvements, shall be remitted to the Department of Defense for deposit to Family Housing Management Account, Defense (97 X 0700).

(c) *Proceeds from sale or transfer of property acquired.* Under section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 558), the proceeds from a sale or transfer of buildings or other improvements on river and harbor improvement projects may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, which are on nonexcess land come within the purview of this law. Where both land and buildings or other improvements are excess, proceeds from the sale of land and buildings, or either one, will be deposited in the land and water conservation fund as provided in paragraph (a) of this section.

### § 644.323 Neutral language.

Wherever the words ''man'', ''men'', or their related pronouns appear in this subpart, either as words or as parts of words (other than when referring to a specific individual), they have been used for literary purposes and are meant to include both female and male sexes.

### §§ 644.324–644.325 [Reserved]

## Procedure for Placing Real Property in Excess Status

### § 644.326 Army military real property.

Military real property, including industrial real property, under the control of the Department of the Army will be placed in excess status as outlined in AR 405–90.

### § 644.327 Air Force military real property.

Military real property under the control of the Department of the Air Force will be placed in excess status as outlined in AFR 87–4.

### § 644.328 Army military leased property.

(a) Department of the Army command installations or parts thereof held by lease, permit, or other similar right of occupancy, excess to the needs of the using service will be reported direct to the Division of District Engineer for disposition wherever essential continuing operations of the installation will not be adversely affected, and the annual rental does not exceed $50,000.

(b) Division Engineers are authorized to make the finding that leased real estate of the Corps of Engineers, where essential continuing operations of the installation are not adversely affected, and the annual rental does not exceed $100,000, is excess and to take necessary action to cancel or otherwise dispose of leases.

(c) Any leased command real estate not coming within the category outlined in paragraphs (a) and (b) of this section will not be considered by the Division Engineer as excess until notice is received from the Chief of Engineers (COE) that the property has been placed in excess status in accordance with AR 405–90.

### § 644.329 Army civil works real property.

(a) *Fee-owned land and easements.* (1) Action by Division/District Engineer (DE). When the DE is of the opinion that real property acquired in fee or easement for a civil works project is no longer required for such purpose, he will submit a report and recommendation to HQDA (DAEN-REM) WASH DC 20314, accompanied by:

(i) A brief description of the character or nature of the land with an appropriately marked map showing the approximate acreage consideration to be excess. Detailed perimeter descriptions need not be procured or furnished with the report and recommendation for excessing.

(ii) Description of buildings and improvements.

(iii) Information as to circumstances that might hinder or prevent disposition, e.g. remoteness of location, unfavorable topography, and lack of legal access.

(iv) Information as to when and how the property was acquired.

(v) Information as to the estate which the Government has in the land, reservations and exceptions in and to the Government's title, and outstanding interests granted by the Government or reserved or excepted in the acquisition of the land, will be stated with particularity. The map or plat will delineate any grant, exception or

reservation, such as telephone, telegraph, electric transmission, oil, gas, and water lines.

(vi) Purchase price of lands (estimate if only a portion of original tract), buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(2) *Action by the Office of the Chief of Engineers.* When the value of an easement interest reported pursuant to (a)(1) of this section does not exceed $1,500, OCE will make the final determination of excess and authorize action accordingly. In the case of fee-owned land regardless of value, or easement interests having a value in excess of $1,500, when OCE finds that no requirement for the property exists, a recommendation will be made to the Secretary of the Army that authority be granted for disposal of the property.

(b) *Leaseholds.* When the DE is of the opinion that real property acquired by lease for a civil works project is no longer required for such purpose, and after screening the property for other Federal requirements in accordance with §§ 644.333 through 644.339, he will take necessary action to terminate the lease in accordance with the procedure outlined in §§ 644.444 through 644.471.

### §§ 644.330–644.332 [Reserved]

SCREENING, REASSIGNMENT AND TRANSFER OF REAL PROPERTY

### § 644.333 Screening for defense needs.

Real property which becomes excess to the needs of any element of the Army or Air Force will be screened against requirements of other Department of Defense (DOD) agencies and the U.S. Coast Guard in order to promote and obtain the most efficient and complete utilization of real property before disposing of it.

(a) *Procedure for screening Army military property.* Screening for defense requirements with respect to base closures publicly announced by the Secretary of Defense or Secretary of the Army which result in excessing of real property will not be accomplished unless directed by HQDA (DAEN-ZCI) Washington DC 20314. Instructions to screen will be included in the disposal directive transmitted to the DE when such action is desired. In the absence of such instructions, it is presumed that DOD has negatively evaluated all possible requirements of DOD agencies before making the public announcement.

(1) *Fee-owned land.* Screening is required in all other cases unless specifically directed otherwise. Property will be screened simultaneously against other Army requirements, and for Navy, Air Force, Coast Guard, and Defense agency requirements. The property should also be screened against known Department of the Army Civil Works requirements.

(i) The DE will dispatch a screening message promptly upon receipt of an excess directive or recommendation pursuant to AR 405–90. The sample screening message in ER 405–1–12 at Figure 11–1, or a letter similar in form and content will be used without substantial deviation.

(ii) All action addressees and parties listed for information on Figure 11–1 in ER 405–1–12 will be included, except that Air Force real property in Hawaii will be screened with the Commander-in-Chief, Pacific Air Forces, in lieu of HQ, USAF. The appropriate major Army command, when not the using command, will be listed as an action addressee.

(iii) In no case will screening be deferred unless authorized by DAEN-REM. At the expiration of the screening period (normally 30 days) a report of results will be forwarded and subsequent action initiated as provided in paragraph (e) of this section.

(iv) For certain cases, most frequently in connection with base realignments or Executive Order 11954 surveys, accelerated screening procedures are set out in AR 405–90.

(2) *Capehart and Wherry Housing Projects.* Due to the complicated financial arrangements under which such projects are constructed and operated, the disposal thereof, whether separately or as a part of a larger installation, requires careful study. In order to assure maximum time in which to discover and evaluate problems arising in each of such cases, the DE will notify HQDA (DAEN-REM) Washington DC 20314, by teletype, immediately upon receipt of information of an installation commander's recommendation of

excess involving Capehart and acquired Wherry housing projects. Included with this notice will be advice on the source of utilities and any problems of which the DE may be aware.

(b) *Leaseholds, buildings and improvements.* Leaseholds, buildings, and other improvements will not be screened formally within the Department of the Army (DA). When such property is made available or disposal under AR 405–90 and §§ 644.326 through 644.329, it will be screened by the responsible DE with the Air Force, Coast Guard, and Navy and against known Army military and civil works requirements within the Division. Screening with the Air Force of leaseholds having an annual rental in excess of $50,000 will be addressed to HQ, USAF. Other Air Force screening under this subparagraph will be with local Air Force installations. Screening with the Navy will be addressed to the appropriate naval district. Screening with the Coast Guard and Defense agencies will be with the local representatives of those agencies. Property under the jurisdiction of GSA which has been assigned to the DA or Department of the Air Force (DAF) for use is not subject to this screening procedure, but the DE will determine whether such property would serve any current unfulfilled real property acquisition directives pending in his office.

(1) *Family housing leases.* Family housing leases under authority of Section 515, Pub. L. 84–161, 69 Stat. 352, as amended and extended, will be terminated promptly upon determination that the property is excess to the needs of the using command, without screening for other requirements.

(2) *Limit screening.* Screening which would serve no useful purpose is to be avoided. Screening of buildings and improvements on sites needed for approved construction should be limited as construction schedules require. The DE will take timely action to minimize additional cost and rental payments due to screening and may, at his discretion, limit screening of leaseholds and improvements to be removed from the site to informal notices to appropriate local Defense agencies. The DEs are authorized to waive screening of nonassignable or short term interests in real property when such screening would serve no useful purpose.

(3) *Notice of restoration requirements.* All screening notices of leaseholds and improvements available for off-site removal will indicate that transferees will be required to perform necessary site restoration as a prerequisite to obtaining transfer and will reflect the extent of restoration required.

(c) *Procedure for screening civil works property.* Buildings and improvements, leaseholds, and fee-owned land that have been determined excess to civil works requirements in accordance with this part will be screened with the appropriate major Army and local service commanders, and with the Navy, Air Force, Coast Guard, and Defense agencies. (GSA property assigned to the Army for use is not subject to formal screening hereunder but will be screened against known acquisition directives or requirements in the DE office.) Except to the extent that DEs determine they are inappropriate, screening procedures for civil works property will be the same as for Army military property.

(d) *Screening of Air Force property.* HQ, USAF and the major Air Force commands screen Air Force real property before authorizing disposal action by the Corps of Engineers in accordance with AFR 87–4. DEs will act on requests for disposal action on buildings and improvements and leased property received directly from major Air Force commands which conform with AFR 87–4. Disposal directives on fee-owned land and easements will be issued by HQ, USAF and referred through DAEN-REM.

(e) *Report on screening and related actions.* Immediately following the screening of fee-owned land, the DE will forward to DAEN-REM a report of the results of the screening (with comments and recommendations where a further Army or other Defense requirement is indicated). This report will serve as one of the basis of a determination whether the property is excess to the rquirements of the DOD. Upon dispatch of the screening report, the DE will proceed with further action pursuant to §§ 644.340 through 644.347 and §§ 644.385 through 644.389. No report on screening of civil works property is

required unless there is a request for transfer or reassignment of the property screened.

(f) *Property with an estimated value of $50,000 or less.* If the property has an estimated value of $50,000 or less, the determination that the property is excess to Army requirements will be made by the Department of the Army without referral to DOD, and the Chief of Engineers will direct the DE accordingly. Upon receipt of this disposal directive, prompt action will be taken to report the property to GSA or take other disposal action as appropriate.

(g) *Estimated value in excess of $50,000.* If military property has an estimated value in excess of $50,000, it must be reported to the Armed Services Committees of Congress pursuant to title 10, United States Code, section 2662. The final Army determination of excess and recommendations to the Assistant Secretary of Defense (MRA&L) to approve the proposed disposal report to the Armed Services Committees by the Chief of Engineers, utilizing Real Estate Disposal Report, ENG Form 2187R, are combined in a single action. The Chief of Engineers will advise of DOD approval of the proposed disposal when made. Upon receipt of this information responsible Division and District Engineers will furnish GSA a preliminary report of excess. The preliminary report of excess will be finalized, upon receipt of instructions from the Chief of Engineers. This procedure is also applicable to Air Force disposals. If the preliminary report of excess is sufficiently complete and accurate, it may be finalized by letter or simple statement on Standard Form 118, Report of Excess Real Property.

(h) *Date of excess for reporting purposes.* From the above, it will be noted that where property has an estimated value in excess of $100,000, the determination that the property is excess to the requirements of the Department of the Army is, in effect, made concurrently with the determination that the property is excess to the requirements of the DOD, or is approved for transfer to another military department. For all practical purposes, these determinations are best evidenced by the Assistant Secretary of Defense's approval of the proposed disposal. The date of approval may be used as the date the property was determined excess to Army requirements for reporting purposes.

### § 644.334 Reassignment and transfer procedures.

*Reassignment* refers to the changing of the administrative or command jurisdiction of real property from one command to another within the same military department. Reassignments may be accomplished by the Secretary or the staff without prior approval of the DOD or the Armed Services Committees of the Congress. *Transfer* refers to changing the jurisdiction for using and administering real property from one military department to another.

(a) *Reassignment Procedures—Army—*(1) *Military.* Reassignments of military real property are accomplished pursuant to a directive from DAEN-REM. These are not real estate disposal actions.

(2) *Civil works.* Reassignments from civil works to military jurisdiction, and vice versa, are accomplished pursuant to directive or approval of the Secretary of the Army based on the recommendations of the Chief of Engineers.

(3) *Information required.* Information to support recommendation for reassignments of military or civil real property to another using service of the Army, or to change the military or civil accountability within the Corps, will be furnished by the DE to DAEN-REM as follows:

(i) Reference to excess directive, if any.

(ii) Description and map of lands.

(iii) Date, manner, and cost of acquisition of land and improvements.

(iv) Reference to any encumbrances which might affect the reassignment and use.

(v) Proposed effective date of reassignment.

(vi) Proposed new use.

(b) *Reassignment of Air Force property.* The Air Force Staff reassigns real property within the Department of the Air Force.

(c) *Transfer of military property.* Procedure for transfer among military departments is substantially the same as for transfer to other Federal agencies,

and is set forth in §§ 644.400 through 644.443 and §§ 644.472 through 644.500.

### § 644.335 Screening of excess DOD property for nondefense Federal agency needs.

(a) *Screening by GSA.* (1) GSA will screen all excess real property reported to it for disposal, to determine whether the property is surplus to all Federal agencies.

(2) GSA will screen certain classes of excess real property which must be reported to it for screening, even though the Department of the Army will act as the disposal agency (§§ 644.348 through 644.367).

(3) Under the FPMR, Federal agencies are allowed 30 days to advise whether there is a tentative or firm requirement and another 30 days to determine and advise whether the tentative requirement is firm. Where there is a firm requirement, agencies are allowed an additional 60 days to prepare and submit a formal request for transfer pursuant to FPMR Section 101–47.203–7. The DE should obtain from GSA information on the status of screening if advice is not furnished promptly after expiration of the screening period.

(b) *Screening by Corps of Engineers.* Properties which are not reported to GSA for disposal or screening will be screened by the DE with nondefense Federal agencies at the same time they are screened with Defense agencies. Screening of such properties will be limited to agencies that maintain local offices and may be done on an informal basis. The DE may waive screening of nonassignable and short term interests in real property when they determine such screening will serve no useful purpose. When screening discloses no requirement, the property will be determined surplus and disposed of.

### § 644.336 Notices to Departments of Interior (DI); Health and Human Resources (HHR); Education; and Housing and Urban Development (HUD).

Simultaneously with screening under § 644.335 notices of availability will be given to DI of land suitable for public park and recreation or an historical monument site; to HHR and/or Department of Education property suitable for educational purposes or to protect the public health, and to HUD of property for housing and related facilities (Section 101–47.203.5 FPMR). Where such notice is given, these departments will be notified promptly, if screening discloses another Federal requirement for the property. They will also be notified if there is no other Federal requirement and the property is determined surplus.

### §§ 644.337–644.339 [Reserved]

## CLEARANCES—ARMY MILITARY REAL PROPERTY

### § 644.340 Reports to the Armed Services committees.

(a) Sections 644.340 through 644.347 describe the responsibilities of the Chief of Engineers in, and prescribes procedures for, clearing proposals for certain leasing and for disposals of Army real property with the Department of Defense and the Armed Services Committees of the Senate and House of Representatives. (The Air Force obtains its own clearance.) It is applicable to Division and District Engineers having military real estate responsibility. Clearance is not required for civil works properties.

(b) Title 10 U.S.C. 2662 as amended by Pub. L. 96–418, dated 10 Oct. 1980, provides, in part that:

> (a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and of the House of Representatives:
>
> * * * * *
>
> (3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $100,000.
>
> (4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $100,000.
>
> (5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $100,000.
>
> (6) Any termination of modification by either the grantor or grantee of an existing license or permit of real property owned by

the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the property by the military department.

* * * * *

(c) This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(c) While not specifically required by 10 U.S.C. 2662, DOD has directed that all proposed relinquishments of public domain land will be reported to the Armed Services Committees where (1) the area exceeds 500 acres or (2) the estimated fair market value of the property exceeds $100,000.

### § 644.341 Clearance with the Armed Services committees.

(a) Prior to a final report of excess, or transfer to another Federal agency or a State, of any Government-owned military real property with an estimated value, including the value of existing improvements, in excess of $100,000, the proposed disposal must be reported to the Committees. Also, proposals to outlease military real property for other than agricultural or grazing purposes must be reported if the estimated annual rental consideration is more than $100,000. A formal appraisal for estimating value need not be made. Reports to the Committees pertaining to Army military real property are made by the Chief of Engineers, and copies of reports are furnished the two senators of the State, and the congressman of the district where the property is located. Reports pertaining to Air Force property are made by that department. DEs, upon request, will assist Air Force commands in assembling the required data.

(b) For Army property, data will be furnished in the format shown in Figure 11–2 (ENG Form 2187–R, Real Estate Disposal Report) in ER 405–1–12, and three copies forwarded to HQDA (DAEN-REM) WASH DC 20314. The information should be submitted within three weeks after dispatch of the screening message, or within three weeks after receipt of the disposal directive when screening is not required.

(c) Clearance for transfer to another military department is obtained by the acquiring department. However, HQDA (DAEN-REZ-L) obtains clearance for transfer of Army property to a nondefense Federal agency where authorized by law.

### § 644.342 Prior approval of Department of Defense.

(a) DOD Instruction 4165.12 requires advance approval by the Assistant Secretary of Defense (MRA&L) of disposal actions requiring congressional committee clearance. DOD approval is also required for withdrawal from excess of real estate, or an interest in real estate, which has an estimated fair market value in excess of $100,000.

(b) The data submitted pursuant to § 644.341 will be used to obtain DOD approval of projects to be submitted to the Armed Services Committees. Appropriate information will be furnished to obtain required DOD approval of withdrawals from excess.

### § 644.343 Additional data for clearance with the committees.

To support Army witnesses appearing before the Armed Services Committees, and to satisfy other information requirements, include the following data when forwarding the ENG Form 2187–R:

(a) Four copies of a site plan of the installation, clearly depicting the property involved, and four copies of a real estate map, color coded with legend, showing the area and acreage to be excessed.

(1) Segment-size maps and plans should be of excellent quality, current, show accurate acreages, and current name of installation. They must be clearly visible at a distance of 30 feet or more.

(2) Basic color codes for maps are:

Red—Excess Area(s)

Green—Retained Area
Yellow—Previously Excessed Area(s)
Black or Dark Blue—Installation Boundary, heavy definition
Other Colors—for other purposes

(b) Copy of last utilization inspection report, plus information as to when and how the excess property was last used by the Army.

(c) Basis for disposal: Base closure announcement; E. O. Survey; Command Report of Excess; Report of Availability; etc.

(d) A list of and general terms of any outgrants in effect on the excess area.

(e) Whether continuing military activities are housed on the property proposed for disposal; arrangements which have been made to provide space for these activities; estimated cost of leasing or converting space for that purpose, and any other costs of closing or severing the installation and relocating the activities.

(f) Whether civilian employees will lose their employment, number of employees involved, and to what extent they can be employed elsewhere.

(g) Details of significant history of acquisition, development, and disposal, if not included in ENG Form 2187–R. Include official name of installation and former designations.

(h) Description of any related or offpost family housing, giving number of units, type (MCA-Capehart, etc.) acreage of site, land and construction costs, and distance from installations served.

(i) Probable impact on local economy, if any.

(j) Estimate of any annual savings in operating and maintenance costs.

(k) Statement as to exchange potential of excess area.

(l) Estimate of value, including any restrictions or limitations on prospective use of the land by subsequent users.

(m) Character and use of area in vicinity of excess area.

(n) Care and custody costs for excess area.

(o) Staff/MACOM coordination.

(p) Environmental Assessment.

(q) Any other pertinent information, e.g., any adverse factors severance or undesirable impact on utility systems, and local interest in acquiring the property.

(r) Congressional district in which the property is located.

### § 644.344 Coordination with GSA.

At the time of formal submission of the Disposal Report to the Armed Services Committees, DAEN-REM will furnish copies to the DEs and to the central and regional offices of GSA as advance information to permit preliminary disposal planning.

### §§ 644.345–644.347 [Reserved]

## Reports of Excess Real Property and Related Personal Property to General Services Administration (GSA)

### § 644.348 Delegation of authority to division and district engineers.

Much of the authority and responsibility of the COE as real estate agent for the Departments of the Army and Air Force to report excess real and related personal property to GSA in accordance with the provisions of the Federal Property Act, and the Federal Property Management Regulations (FPMR), subpart 101–47.3, has been delegated to Division and District Engineers having responsibility for real estate operations. Final reports will be made only after the property has been determined excess to the needs of the Department of Defense, in accordance with §§ 644.333 through 644.339, and has been cleared with congressional committees, if required, in accordance with §§ 644.340 through 644.347.

### § 644.349 Excess property reported for disposal.

The following types of excess real property must be reported to GSA for disposal, utilizing Standard Form 118 (SF 118), Report of Excess Real Property, as set forth in § 644.355:

(a) *Fee-owned.* All fee-owned property, with improvements and related personal property, which has, in the opinion of the DE, an estimated fair market value of $1,000 or more, together with such incidental, related, or appurtenant lesser interests, with or without Government-owned improvements and related personal property,

held under lease, permit, license, easement, or similar instrument, useful in connection therewith, except property which is subject to:

(1) A lease containing an option to purchase;

(2) A lease containing a right of first refusal to purchase or to lease for an additional period;

(3) A right in the Government's grantor to the reversion of title; or

(4) A right reserved by the Government's grantor to repurchase the property.

(b) *Public domain.* All withdrawn or reserved public domain lands, together with the improvements thereon which, in the opinion of the DE, have an estimated fair market value of $1,000 or more, and for which notification, pursuant to 43 CFR 2374.1, has been received from the Bureau of Land Management (BLM) that the property, in effect, has been determined excess within the meaning of the Federal Property Act (see §§ 644.376 through 644.384 for procedures for disposal of public domain land). Minerals in the lands will be specifically excluded from the report of excess unless BLM advises otherwise. The Report of Excess, SF 118, will include as a part of the report on the Government's legal title, a true copy of the notice by BLM to report the property excess, and information of record in BLM on claims, if any, by other agencies, and any claims or encumbrances under the public land laws.

### § 644.350 Excess property reported for screening.

The types of property described in paragraphs (a), (b), and (c) of this section must be reported to GSA for screening purposes notwithstanding the fact that the military departments have been delegated authority to dispose of such property. SF 118 will be utilized for reporting these types of property without attaching the usual Schedules A, B, and C and supporting documents. A notice should be included on the face sheet that ''This report is made for screening purposes only. Disposal will be accomplished by the Corps of Engineers.'' Distribution of copies of such reports within the departments is not required.

(a) Land held under lease, permit, license, easement, or similar instrument, other than listed in § 644.351.

(b) Improvements located on non-excess Government-owned lands (including improvements on land held under permit from another Government agency; see §§ 644.376 through 644.384, for preliminary procedure in these cases), which improvements, with related personal property, in the opinion of the responsible DE, have an estimated net salvage value of $1,000 or more.

(c) Improvements located on excess land held under lease or other temporary right of occupancy (even though a report of excess is not required for the leasehold itself or other right of occupancy interest under the criteria set forth in § 644.351) when, in the opinion of the DE, the improvements have a net salvage or market value of $1,000 or more, and it is proposed to dispose of such improvements by sale for removal from site. The report of excess will contain an estimate of the cost of restoration necessary under the lease that a prospective transferee agency will be required to assume.

(d) Fee-owned property which, with improvements and related personal property, in the opinion of the responsible Division or District engineer, have a fair market value of $1,000 or more, and is not reported to the General Services Administration for disposal as a result of the exception contained in § 644.349(a) (because of outstanding options to purchase, etc., or because of rights retained by the Government grantor).

### § 644.351 Excess property exempted from reporting.

No reports to GSA are required for the following types of excess property:

(a) Fee-owned land, including withdrawn or reserved public domain land which BLM made available for disposal under Federal Property Act, together with the Government-owned improvements and related personal property, having an estimated fair market value of less than $1,000 in the opinion of the responsible DE;

(b) Excess non-Government-owned property held under lease, license, easement, or similar instrument, when

Government-owned improvements with related personal property have a net salvage value of less than $1,000 or are to be transferred to the owner of the land in restoration settlement, and;

(1) The lease or similar instrument is subject to termination by the grantor of the premises within nine months; or

(2) The remaining term of the lease or similar instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(3) A provision of the lease or similar instrument would preclude transfer to another Federal agency or disposal to a third party; or

(4) The lease or similar instrument provides for use and occupany of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet; or

(5) Where additional rental would be incurred.

(c) Excess Government-owned improvements on nonexcess land, which improvements, in the opinion of the responsible DE, have a net salvage value of less that $1,000.

(d) Leased space assigned by GSA, and land and improvements owned by and permitted from other Government agencies.

(e) Excess timber, sand, gravel and stone-quarried products, and growing crops on nonexcess land regardless of value.

(f) Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of the Interior for return to the public domain pursuant to §§ 644.376 through 644.384.

(g) Prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailers (with or without undercarriages), which are located on nonexcess land for off-site use. These types of structures shall be reported as personal property in accordance with FPMR, part 101–43, Utilization of Personal Property. However, when such structures are located on leased or permitted land subjecting the Department to any restoration obligations, the property will be treated as real property for the purpose of satisfying such obligations to the maximum extent feasible.

### § 644.352 Evaluation and reporting of flood hazards.

Pursuant to Executive Order 11296, 10 August 1966, the DE having civil works responsibility for the area where property proposed for disposal is located will evaluate the property (civil or military) for the presence of flood hazards. If such hazards are found, a report will be forwarded to HQDA (DAEN-REM) recommending appropriate restrictions with respect to future uses of the property, or that the property be withheld from disposal. If decision is made to proceed with disposal, detailed information regarding the flood hazard will be reported to GSA on SF 118 as required by FPMR, 101–47.202–2, with the appropriate restrictions with respect to use of the property by a purchaser and his successors. (See ER 1105–2–40 for information on the Flood Plain Management Services Program.)

### § 644.353 Determination of values for reporting.

Where more than one parcel or item of excess property is involved at the same project or installation, the total value of all such parcels or items will be included in determining whether the property has an estimated value of $1,000 or more for the purpose of making reports of excess. Estimates of value should be made by qualified real estate employees, but not necessarily by a professional appraiser.

### § 644.354 Conditional reports of excess.

As an exception to its general policy, GSA has agreed with the Department of Defense to accept reports of excess on some facilities with instructions on their disposal, specifically:

(a) *Defense Industrial Reserve (DIR).* The Defense Industrial Reserve Act 50 U.S.C. 451 *et seq.,* authorizes the Secretary of Defense to determine which excess industrial properties should become a part of DIR and to formulate a national security clause or recapture provisions to preserve the production capacity of the plants for use in the event of a national emergency. Excess DIR plants are reported to GSA for disposal subject to the national security clause or the recapture provisions. (See FPMR Subsection 101–47.306–2 for procedures where GSA is unable to dispose

of the property because of the restrictions imposed by the national security clause or recapture provisions.)

(b) *Reserving property for civil defense purposes.* GSA has agreed to accept reports of excess of missile sites and other facilities having similar protective features, with restrictions on their disposal. DEs will be notified when DOD advises that a specified local government unit is interested in acquiring such property. Reports of excess will specify the local government unit interested. Disposal of the property will be limited to conveyance to the local government unit, with conditions restricting its use to civil defense purposes for a period of 20 years, with reverter to the United States for breach of condition. In appropriate cases, GSA will enter into a temporary lease arrangement if necessary to afford a local government unit an opportunity to obtain the necessary funds for purchase. This procedure is limited to cases where DOD has determined and advised there is a civil defense need. Disposal action will not be delayed pending receipt of such advise.

### § 644.355 Preparation and submission of reports of excess.

(a) *Preparation*—(1) *General.* Reports of excess will be prepared on SF 118, with schedules, in accordance with the instructions contained in FPMR section 101–47.4902, and § 644.349 herein. However, since the type of information called for a Block 9 of standard form (SF) 118 and Columns f, g, h, and i of schedule A is not generally applicable to camps, airfields, etc., such information will be furnished only when it is available and can be furnished without additional cost. Reports of excess will include all related or appurtenant easements, licenses, and related personal property. Decontamination data will be included as prescribed in §§ 644.516 through 644.539. Information on flood hazard will be included as required by § 644.352.

(2) *GSA regulations.* Pursuant to GSA regulations, all final reports of excess will be made only after the property has been determined excess to the needs of the Department of Defense and will bear the statement: ''This property has been screened against the known defense needs of the Department of Defense.'' Report of excess will indicate that the provisions of title 10, United States Code, section 2662, requiring reports to the Armed Services Committees of Congress, have been met, or that the report of excess is not subject to this section.

(3) *Reports of excess—Air Force property.* The Air Force will prepare SF 118, with Schedules A and C, and transmit them to the DE for completion and execution. Land descriptions, title reports, and other data required by the FPMR will be the responsibility of the DE.

(4) *Reports of excess—Army property.* DEs will prepare the SF 118 and the schedules for excess Army property.

(b) *Submission.* Reports of excess will be transmitted directly by the DE to the appropriate regional office of GSA. Each DE making such reports of excess will assign a number in Block 1 of SF 118, beginning with No. 1 for the first report and continuing in numerical sequence for succeeding reports made during the calendar year. The number will be preceded by the symbol of the DE making the report and the calendar year e.g., SWF–79–6, for the sixth report submitted by Fort Worth District of Southwestern Division for calendar year 1979.

### § 644.356 Report on Government title.

In all cases where Government-owned land is reported, there shall be attached to and made a part of SF 118 (original and copies thereof), a report prepared by a qualified employee of the holding agency on the Government's title to the property, based upon his review of the records of the agency. The report shall recite:

(a) The description of the property.

(b) The date title vested in the United States.

(c) All exceptions, reservations, conditions and restrictions relating to the title acquired.

(d) Detailed information concerning any action, thing or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected, or may have affected, the right, title, and interest of the United States in and to the real property (together with copies of such

legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title or interest may have been affected). In the absence of any such action, thing or circumstance, a statement to that effect shall be made a part of the report.

(e) The status of legislative civil and criminal jurisdiction over the land peculiar to the property by reason of it being Government-owned land. If the United States does not hold such legislative jurisdiction, the report on government title should so state.

(f) All exceptions, reservations, conditions and restrictions imposed by higher authority on the property at time of disposal. No additions or substantive changes to these will be made without prior approval from HQDA (DAEN-REM), WASH, DC 20314.

(g) If the property, or any portion of it, has been listed in the National Register of Historic Places, or has been nominated for listing or nomination, this should be included in the SF 118. Specific fixtures and related personal property having possible historic or artistic value should also be included. (See § 644.317 for information on historic preservation.)

### § 644.357 Outgrant instruments, appraisals and muniments of title.

There shall be transmitted with the SF 118 copies of outgrants involving the property reported, all conveyances, encumbrances and other instruments affecting the use and operation of the property, including deeds, mortgages, and agreements covering and licenses to use any patents, processes, techniques, or inventions. Where there is more than one like instrument as, for example, agricultural leases, it may be preferable to list them, locate them on the land use map, and furnish a sample copy. FPMR contemplates that muniments of title will be transmitted with the report of excess. The title report (§ 644.356 of this part) will state that HQDA (DAEN-REP) WASH DC 20314 is the custodian of title papers and has been requested by the DE to transmit applicable title papers direct to the GSA Regional Office. Accordingly, as soon as practicable after receipt of an information copy of the declaration of excess by the using service, and a disposal directive, the DE will assign a disposal report number and advise DAEN-REP to transmit the pertinent title papers directly to the appropriate GSA Regional Office, citing the disposal report number as a reference. Simultaneous action by DAEN-REP and the DE to assemble necessary reporting data is important to avoid delay of acceptance by GSA of the Report of Excess. If experience should demonstrate that such simultaneous preparation and transmittal of data is not practical in saving time and effort, the DE will arrange in advance for transmittal of the necessary title data from DAEN-REP for incorporation in the Report of Excess before transmittal by the DE to the GSA Regional Office.

### § 644.358 Deposit of proceeds from disposal of family housing in the family housing management account.

(a) Title 42 U.S.C. 1594a–1(b) provides that the proceeds from the disposition of Department of Defense Housing, including related land and improvements, shall be transferred to the DOD Family Housing Management Account for the purpose of debt service. Arrangements have been made between DOD and GSA to implement this law and apply it to excess MCA housing as well as to housing encumbered by mortgage debts such as Capehart and Wherry Housing projects. (See § 644.322(b).)

(b) The agreement with GSA calls for separate identification and description in the Report of Excess (SF 118) of those improvements which are considered family housing within the purview of the law and a request in the report that proceeds from disposal be transferred to the DOD Family Housing Management Account. (The actual transfer of funds will be accomplished at Washington level.)

(c) Where the Report of Excess includes both housing and property not related to housing, separate schedules (SF 118 a and b) will be prepared to cover the housing involved, including related land and other improvements. The housing schedules should be annotated and arranged categorically to show:

(1) Number of structures by type of authorization, *i.e.*, Wherry Act, Capehart Act, Military Construction Authorization Act, Lanham Act, etc.

(2) The number of family units.

(3) Those improvements and collateral facilities which are considered ''related'' to the housing.

(4) Where reasonably apparent, a description of the acreage or boundaries of the family housing areas as distinguished from other excess lands.

(5) A statement as follows: ''Net proceeds from the sale of this family housing, including related lands and improvements, shall be remitted to DOD for deposit to Family Housing Management Account, Defense 97X0700.''

### § 644.359 Supplemental information.

The DE will cooperate to the greatest extent practicable in furnishing further information and assistance requested by GSA Regional Offices. However, requests for engineering surveys should be carefully monitored in the interest of economy. When such requests appear excessive or other requests for services appear to require unnecessary expenditures, DAEN-REM will be fully informed, with recommendations, in order that the matter may be resolved through appropriate coordination with the GSA central office.

### § 644.360 Reports submitted for screening.

Excess leaseholds and buildings and improvements to be disposed of separately from the land which, pursuant to §644.350, must be reported to GSA for screening purposes only, will be reported immediately when the property is determined to be excess to the particular military department having jurisdiction. The report will contain the statement: ''This property is reported for screening with civilian agencies by GSA prior to its disposal by the Corps of Engineers. The property is being screened within DOD and when the screening has been completed, appropriate certification will be submitted to GSA.'' Screening against defense requirements, pursuant to §§644.333 through 644.339, will then be completed and GSA notified of the result. If such screening results in the development of a requirement by one of the other military services, the Report of Excess will be withdrawn and the transfer of the property to the requesting military service effected. This specialized procedure for this type of property is adopted to allow screening for defense requirements by the Corps of Engineers to be accomplished simultaneously with the screening of civilian agencies by GSA. Where circumstances require that this type of property be screened within a limited period of time, the period should be specified and an explanation set forth on the face of the Report of Excess, as, for example: ''Buildings are in the way of planned new construction and must be removed or demolished not later than (date). Accordingly, advice must be received on or before (date) as to whether a requirement exists for the property, or whether it is to be transferred or assigned to another Federal agency for removal within the time specified.'' If such advice is not received by the time specified, the property should be disposed of without further delay and GSA notified of the action.

### § 644.361 Distribution of report of excess.

Copies of the final Report of Excess (SF 118) will be distributed simultaneously as follows:

(a) Complete copies to: (1) Regional Office, GSA—original and four copies.

(2) District Engineer—one copy.

(b) Division Engineer—one copy of the cover sheet (SF 118), and transmittal letter.

(c) A complete copy, except Schedule C (SF 118c), to HQDA (DAEN-REP) WASH DC 20314 and one copy of the cover sheet to HQDA (DAEN-REM) WASH DC 20314.

(d) Where family housing is involved, one copy of the cover sheet and the pertinent schedules A and B to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, DC 20301.

### § 644.362 Notice of receipt.

GSA should promptly notify the holding agency of the date of acceptance of each Report of Excess (SF 118). The date GSA will assume the expense of cost and custody as provided in

§§ 644.368 through 644.375, will be figured from this date.

### § 644.363 Withdrawals or corrections of reports of excess.

(a) Subject to the approval of GSA, and to such conditions as GSA considers appropriate, Reports of Excess may be withdrawn or corrected at any time prior to disposition of the property, by filing a corrected SF 118 with the regional office of GSA. Corrections and withdrawals will bear the same number as the report of excess to which they pertain, but will bear a letter suffix beginning with ''A'' for the first correction or withdrawal and continuing in alphabetical sequence for succeeding corrections or withdrawals. ''Correction'' will be conspicuously stamped on the face of the SF 118 for both withdrawals and corrections. Distribution of requests for withdrawal or correction will be the same as that made of the Report of Excess to which the withdrawal or correction pertains.

(b) Property which is reported to GSA for disposal will not be withdrawn without the prior approval of HQDA (DAEN-REM) WASH DC 20314, nor will return of the SF 118 be accepted without the approval of DAEN-REM. (See §§ 644.340 through 644.347, concerning prior approval of DOD for withdrawals from excess of real property having an estimated fair market value in excess of $50,000.)

### § 644.364 Supply of forms.

Standard forms 118, 118a, 118b, and 118c, are not available in normal Army Adjutant General supply channels. The forms should be procured from GSA.

### §§ 644.365–644.367 [Reserved]

## Care and Custody of Excess and Surplus Property

### § 644.368 Procedures and responsibilities for care, custody, accountability, and maintenance.

(a) *Department of the Army military property.* Care, custody, accountability, and maintenance of excess Army military real property will be as prescribed in AR 405–90.

(b) *Department of the Army Civil Works Property.* DEs will retain custody and accountability of all excess civil works real property under their jurisdiction until final disposition is effected.

(c) *Department of the Air Force property.* Pursuant to AFR 87–4, the Department of the Air Force is responsible for care and custody of excess Air Force real property. However, upon request by the Air Force DEs may assume custody if no costs are involved, or where cost is involved if funds therefor are furnished upon request by the DE.

(d) *Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and other Federal agencies.* Where the Corps of Engineers is acting as real estate agent for other Federal agencies, DEs, at the request of the agency, may assume care and custody of excess real property on a reimbursable basis.

### § 644.369 Guidelines for protection and maintenance of excess and surplus real property.

Detailed guidelines are provided in FPMR Subsection 101–47.4913.

(a) *Calculated risk.* These guidelines, which are binding on holding agencies, embody the principle of calculated risk. In applying this principle, the anticipated losses and deteriorations, including pilferage and vandalism, in terms of realizable values are expected to be less than expenditures to minimize the risks. Normally, where property is of little value, only periodic surveillance is necessary and care and custody forces will not be maintained. However, where property, regardless of realizable value, is potentially an attractive nuisance to children and curiosity seekers, or is inherently dangerous, the public should be protected by guards stationed on the property or by other satisfactory means. Every effort should be made to minimize the cost of care, protection and maintenance consistent with these principles.

(b) *Improvements or alterations.* FPMR Subsection 101–47.401–5, provides that improvements and alterations to excess and surplus real property may be considered, with the prior approval of GSA, where disposal cannot be made. However, it is not considered likely that a situation will arise in the Corps' disposal operations where such improvements or alterations can be justified. Repairs necessary for protection

and maintenance of marketable property will not be undertaken except to prevent serious loss to the Government. Excess equipment or facilities should not be updated or improved. At predisposal conferences, or earlier where practicable, the DE, in coordination with GSA representatives, will furnish specific guidance to the using command as to the minimum acceptable GSA requirement for care and custody. The requirement for minimum maintenance does not extend to historic places. Historic places in excess or suplus status will be maintained in accordance with the letter and spirit of approved Department of the Army criteria for protection, preservation and maintenance of historic places.

### § 644.370 Transfer of custody to General Services Administration (GSA).

(a) Custody of an excess installation reported to the GSA for disposal will continue to be held until GSA transfers to its purchaser or other designee. All expenses pertaining to care, custody and maintenance will be borne by the holding department or agency, except that such expense for property reported to GSA for disposal and not disposed of within 12 months from the date the formal report of excess was received by GSA, shall be assumed by GSA as of the first day of the succeeding quarter of the fiscal year. GSA will give notice of the receipt of the report of excess and will, within 15 days, furnish advice on the acceptability of the report. (See FPMR as amended, Subsection 101–47.202–10.) Any request made to the disposal agency to defer disposal action, or failure to submit an acceptable report, will extend the obligation of the department with respect to expenses for care and custody caused by such deferment. In the event the department is not relieved of custody within the period for which it is obligated to stand the expense thereof, the retention of care and custody thereafter will be reimbursed by the disposal agency. Because of the magnitude of custodial expense for larger installations and the longer periods of time often consumed in effecting their disposal, it is imperative that reports of excess be made as promptly as possible in order that the 12-month period may commence and terminate as soon as possible and the department's expense minimized.

(b) The DE will maintain close liaison with GSA with a view to obtaining prompt transfer of custody and accountability from the department to that agency, and will coordinate transfers between the using service and GSA. However, DEs will not take over custody of an installation or coordinate the transfer of custody until a statement of clearance or a statement that such clearance is not necessary because of the use of the installation has been furnished. Under GSA procedures, the department generally retains the responsibility for care, custody, and accountability of its excess facilities until final disposition is made by GSA. Until that time, the property is to be carried on the real property inventory of the department.

### § 644.371 Contracting for care and custody.

Care and custody of excess and surplus installations should be performed by contract whenever it is legally possible and more economical to do so. Due to the temporary nature of such services and the extreme variations in kind and fluctuations in quality of such services required from time to time, contracting for custodial service will often prove to be more economical and efficient. In contracting for such services which include watchman, patrol and protective services, attention is invited to the prohibition against hiring detective agencies pursuant to the following Act of Congress: ''* * * An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia.'' (5 U.S.C. 3108). This has been construed to apply to employees of organizations which provide services of a detective agency, but not to organizations which are organizations to render watchman, patrol or protective services and do not include detective services as one of their functions (26 Comp. Gen. 303). Custodial and protective services referred to herein are the type ordinarily procured by contract by GSA and other Government agencies charged with the responsibility for

care and handling of excess and surplus real property pending its disposal in accordance with the FPMR.

### § 644.372 Care and custody through interim use.

(a) *General.* Upon receipt of initial information that real property is excess, the DE should promptly initiate planning for interim productive use. Interim use should be planned to save care and custody expense but must not interfere with, delay, or retard transfer of the property to another Federal agency or its disposal otherwise. Any permit or lease must have the prior approval of GSA, and shall be for a period not exceeding one year and shall be revocable on 30 days' notice (FPMR Sections 101–47.203–9 and 101–47.312).

(b) *Permits to other Federal agencies.* Interested Federal agencies will be afforded a priority in the interim use of excess and surplus real property. The permit will require the Federal agency to perform care and custody and perform routine maintenance. 41 CFR 101–47.203–8, provides for temporary assignment, conditional transfers, and rental or user charges for use of excess property by Federal agencies.

(c) *Leases for non-Federal use.* Leases of excess and surplus property are made under authority of the Federal Property and Administrative Services Act of 1949, as amended and AR 405–80. Such leases are subject to the Economy Act (40 U.S.C. 303b), and must be for a money consideration only. The lessee can and should, however, be made responsible for ordinary maintenance and restoration as required by standard Corps of Engineers lease forms. Where a portion of an excess or surplus installation is leased, it may be advantageous to enter into an agreement with the lessee for care and custody of the remainder. The agreement cannot provide for a reduction of rental for the portion leased. The Economy Act may not apply in some cases where industrial plants are determined excess subject to the National Security Clause or similar recapture conditions. Such cases should be coordinated with DAEN-REM on an individual basis.

### §§ 644.373–644.375 [Reserved]

## Return of Public Domain Lands and Lands Obtained on a Temporary Basis From Another Federal Agency

### § 644.376 Procedure for disposal of public domain land.

(a) Lands withdrawn or reserved from the public domain, together with Government-owned improvements, which have been determined to be excess to the department, after screening with other DOD agencies and the U.S. Coast Guard in accordance with §§ 644.333 through 644.339, will be processed for disposal in accordance with 43 CFR 2370–2374 and § 644.381 of this part. The DE will file a Notice of Intention to Relinquish as provided by 43 CFR 2372.1. The notice will be filed in the Bureau of Land Management (BLM) Land Office having jurisdiction.

Excess buildings and improvements on the property should be left in place and no disposal action taken thereon pending further instructions from BLM, unless it is determined that they should be abandoned in accordance with the procedures set forth in §§ 644.472 through 644.500. A copy of the Notice of Intention to Relinquish submitted to the appropriate BLM Land Office will be transmitted to HQDA (DAEN-REM) Washington, DC 20314 and to the appropriate GSA regional office.

(b) If any restoration, or other work, is proposed to be performed on the land, the matter will be forwarded to DAEN-REM for prior approval. Where the DE recommends disposition of the land by GSA as excess property rather than return to the public domain, no restoration of the property will be proposed (see 43 CFR 2372.1). Generally, lands which are unimproved, or contain only minor improvements, will be recommended for return to the public domain. Exception to this procedure should be made where development surrounding, or in the vicinity of the land, has changed its character, although the land itself has not been improved. Another exception would be the situation described in § 644.350(d). Generally lands which are extensively improved will be recommended to BLM for disposal as excess property.

(c) If the authorized officer of BLM determines, pursuant to 43 CFR 2372.3, that the conditions prescribed by that regulation have been met and that the land is suitable for return to the public domain, he will notify the DE, as the representative of the holding agency, that the Department of the Interior accepts accountability and responsibility for the property. A copy of this notification will be furnished to HQDA (DAEN-REP) Washington, DC 20314.

(d) If the authorized officer of BLM determines, pursuant to 43 CFR 2374.1, that the land is not suitable for return to the public domain because it is substantially changed in character, and GSA concurs in this determination, he will notify the DE to report the land and improvements, with or without minerals, to GSA as excess property. Upon receipt of this notice, the DE will advise DAEN-REP and report the property to GSA on SF 118, Report of Excess Real Property, including the information on claims and encumbrances furnished by BLM under 43 CFR 2374.1 (c). The holding agency has the same responsibility for care, custody, and accountability of excess public domain as for other property reported to GSA for disposal.

### § 644.377 Formal revocation of public land withdrawals and reservations.

When the authorized officer of BLM determines that the land is suitable for return to the public domain, the BLM Land Office will transmit to the DE a draft of public land order (PLO) designed to formally revoke the order or reservation which withdrew or reserved the land. The DE will review the draft PLO for accuracy and return it unsigned. The draft PLO will be transmitted through BLM channels to DAEN-REM for signature of the Secretary of the Army or Air Force and return to the Washington office of BLM.

### § 644.378 Cancellation of permits.

(a) Land obtained by permit, or some other form of instrument, from another Federal agency on a temporary basis which has not been substantially improved while being utilized by the Department, when determined to be excess in accordance with the procedure set forth in §§ 644.326 through 644.332, will be returned to the Federal agency from which it was obtained.

(b) When it is determined by the DE that land obtained by permit, or other form of instrument, from another Federal agency on a temporary basis has been substantially improved while being utilized by the Department, the DE will request DAEN-REM to determine whether the land is excess, or is expected to become excess, to the requirements of the agency from which it was obtained.

(1) If the agency from which the land was obtained advises that the land is excess, or is expected to become excess, to its requirements, the improvements will be reported to GSA on SF 118 in accordance with the procedure described in §§ 644.348 through 644.347, with a statement that the agency from which the land was obtained has advised that the land is excess, or is expected to become excess to its requirements, and that the agency will be or has been requested to reassume administrative control over the land. Coincident with the report of excess, action will be initiated to return the land to the agency from which it was obtained.

(2) If the agency from which the land was obtained advises that the land is not excess, and is not expected to become excess to its requirements, improvements constructed thereon while the property was being utilized by the Department will be disposed of in accordance with the provisions of § 644.381. Where the improvements are substantial, and cannot be utilized effectively by the agency from which the land was obtained, and it appears that the best interests of the Government may not be served by disposal of the improvements for removal from the site, a report, with recommendations, should be forwarded to DAEN-REM for a determination whether the permit and improvements should be reported to GSA for disposal, or whether other action would be appropriate.

(c) The Chief of Engineers, or his duly authorized representatives, will execute and deliver necessary papers effecting the relinquishment of permits and the transfer of real property to other Federal agencies when the installations to which such real property or permits pertain have been determined

to be excess. However, where permits were obtained at local level, DEs will effect relinquishment in the same manner. Unless otherwise instructed, no action will be taken by the DE to restore or return the lands pertaining to an industrial installation to the agency which granted the permit. DEs will, however, submit the report required in § 644.379.

(d) Where an installation embraces lands acquired in fee by a military department and lands acquired for temporary use from other departments or agencies, and if return of the latter type of lands to the department or agency which granted the permit would destroy the integrity of the installation or affect its ultimate disposal as a unit, a report will be made to DAEN-REM with recommendations that they will provide disposition instructions.

### § 644.379 Procedure for cancellation of permits.

(a) When permitted land is excess and the permit is to be executed, the DE will submit the following information with his recommendations to DAEN-REM:

(1) Description and location of the property;

(2) Date use was acquired;

(3) Department or agency from which acquired;

(4) Manner of acquisition; that is, by permit or other means, with copy of document;

(5) ENG Form 1440–R, Cost of Restoration (Engineer Estimate and Appraisal), which includes a statement of cost and value of improvements or structures placed on the lands by the department;

(6) Statement of restoration work performed by the department if any;

(7) Statement of local representative of owning agency as to whether restoration will be required, or, where restoration work has been performed, whether such restoration is satisfactory; and

(8) Statement that no clearance of explosives or other harmful elements is necessary because of the manner in which the land was used, or, if otherwise, statement of clearance action taken or necessary.

(b) Upon receipt of the foregoing information, the Chief of Engineers will effect relinquishment of the land by letter. Where the DE has authority to relinquish the land as outlined in § 644.378(c), he will effect relinquishment by letter addressed to the permittor, with a copy to DAEN-REM.

### § 644.380 Restoration of lands made available by other Government agencies.

(a) *Requirement.* Where the Department retransfers real property, the use of which has been obtained from other Federal agencies (including withdrawals from the public domain recommended for return to the public domain) by means of use permits, public land orders, or other methods, the property should be restored to a condition as good as that which existed at the time the department took possession, damages by the elements or by circumstances over which the Department has no control excepted, unless the agency from which the property was obtained expressly waives restoration. Restoration of public domain land will not be initiated until the determination is made that the land is suitable for return to the public domain. Public domain land that is to be reported excess to GSA will not be restored. The procedure enunciated in §§ 644.516 through 644.539 relative to neutralization of unexploded bombs or artillery projectiles located on leased premises applies with equal force to Government-owned lands returned to other Federal agencies and to public domain land that is to be reported as excess for disposal by GSA.

(b) *Authority.* The report of the Senate Appropriations Committee on the DOD Appropriation Bill, 1966 (Senate Report 625, 89th Congress, dated 18 August 1965), contained the following language:

> Such funds as may be required may be used to restore lands under jurisdiction of other Government agencies, damaged while being used for military training purposes under agreement with such agencies.

The Comptroller General considers the foregoing to be a clear expression of Congressional intent, and that authority exists for the Department of the Army to restore (or make payment in

lieu thereof) lands of other Federal agencies which have been damaged by the Army while being used under agreement.

(c) *Determination of restoration costs.* ENG Form 1440–R, Cost of Restoration, appropriately modified, will be used for the preparation of an estimate of cost of restoration, or salvage or market value, for the purpose of determining the cost of restoration.

(d) *Payments for, or in lieu of restoration*—(1) *Work performed by the Department of the Army.* If the work is performed by the Department, payment will be made from funds available to the office performing the work.

(2) *Work performed by controlling agency.* If the work has been performed by the agency having administrative control over the property, pursuant to agreement with the Department, reimbursement to that agency may be made by properly supported SF 1080, Voucher for Transfer Between Appropriations and/or Funds, from funds available to the DE.

(3) *Payment in lieu of restoration.* If the work has not been performed by either agency and a payment is desired in lieu of restoration, the payment is, in effect, an advance of funds. As such, the advance of funds will be accomplished in OCE, based on submission by the controlling agency of SF 1080 properly supported.

### § 644.381 Disposal of buildings and other improvements.

Where improvements have a net salvage value and are not to be reported to GSA for disposal with the land, the permitting agency, or Department of the Interior in the case of public domain land, will be required to reimburse the Army for their net salvage value, or the buildings or improvements will be disposed of in accordance with §§ 644.472 through 644.500.

### §§ 644.382–644.384 [Reserved]

PREDISPOSAL ACTION

### § 644.385 Record of excess classification.

The DE will establish a record on ENG Form 836A, Real Property Disposal Report, of the excess classification of each Army property and each Air Force property for which a preliminary or final real estate directive has been issued.

### § 644.386 Utilization for other needs.

The DE will determine the feasibility of utilizing each installation classified as excess to fulfill current directives for acquisition of real estate or known or foreseen potential needs of the Army or Air Force, which may have been generated since the screening process. If redistribution for this purpose is deemed advantageous, recommendations will be submitted to HQDA (DAEN-REM) WASH DC 20314 on the proposed action, indicating when excess status was determined and by which element of the Departments of the Army or Air Force.

### § 644.387 Suspension of acquisition action on installations proposed for disposal.

When a fee-owned installation is recommended for excess by the installation commander, or a preliminary or final real estate disposal directive is issued by the Air Force, any pending acquisition in connection with the installation will be suspended, unless the directive provides otherwise. A recommended plan for curtailment of uncompleted acquisition will be submitted to HQDA (DAEN-REA-L) WASH DC 20314. The plan will include the following information: Identification by tract numbers, names of owners, and area of each tract for which an option has been accepted or a declaration of taking filed, but as to which it is considered practicable and economical to obtain cancellation of the option or a stipulation for dismissal of the condemnation proceeding and revestment of title. Specific information as to the extent and nature of demolition of improvements, new construction, or other damages or changes made by the Government to the premises, and the probable cost of restoration in case of such cancellation or stipulation, will be included. Pertinent public relations aspects should also be covered. Generally, tracts on which a declaration of taking has been filed will not be returned to the owners by stipulation for amendment or dismissal of the condemnation proceedings. Exceptions to

this may be recommended when shown to be in the best of interest of the United States.

### § 644.388 Army military—screening, clearance, preliminary report of excess, except where an E.O. 11954 survey has been made.

Upon receipt of a copy of the installation commander's recommendation of excess, the DE will take the following actions:

(a) Immediately notify DAEN-REM by teletype, furnishing a brief statement of the real estate included in the recommendation.

(b) Promptly screen the property against Army and other defense requirements if required by and in accordance with §§ 644.333 through 644.339, and advise DAEN-REM of the results.

(c) As soon as the screening message is dispatched under § 644.388(b), or immediately upon receipt of a disposal directive from DAEN-REM when screening is not required by §§ 644.333 through 644.339, DEs will prepare and forward:

(1) SF 118, Report of Excess Real Property and other documentation required in reporting the excess property to GSA.

(2) ENG Form 2187–R, Disposal Report, for clearance with DOD and the Armed Services Committees (ASC) of Congress where required in accordance with §§ 644.340 through 644.347. This should be forwarded to DAEN-REZ-L within three weeks of dispatch of the screening message, or receipt of the disposal directive. This schedule will allow the Chief of Engineers to process the disposal assembly through the DA and DOD secretariats and to obtain necessary clearances from the ASC. DAEN-REM will furnish the DE copies of the DOD approval and the report to the ASC. This office will also furnish copies of the ASC report to the Washington and regional offices of GSA, to permit screening with other Government agencies.

(d) DOD approval of the disposal (property having estimated value in excess of $100,000) signifies the property is excess to Defense requirements. Upon receipt of this approval, the DE will forward a preliminary Report of Excess to GSA by transmitting necessary copies of the completed SF 118, with attachments, carefully identified as preliminary. Where screening is negative for property having an estimated value of $100,000 or less, the property is considered excess to Defense requirements and a final report of excess should be forwarded promptly to GSA.

### § 644.389 Army military—modified predisposal procedures where E.O. 11954 surveys have been made.

(a) DEs will be advised of military installations to be surveyed under E.O. 11954 by a DOD or GSA survey team.

(b) If property is to be declared excess as a result of a decision by the Department of the Army, appropriate commanders and DEs will be advised. The major commander will be requested to submit a Report of Excess pursuant to AR 405–90 to HQDA (DAEN-REM) Washington, DC 20314 within 15 days. DEs will be furnished a copy of the report.

(c) Upon receipt of advice that property will be excessed, the DE, in coordination with the installation commander concerned, will commence preparation of ENG Form 2187–R, if required, for submission to DAEN-REZ-L.

(d) When the Report of Excess is approved, DAEN-REM will advise the DE and will request that screening be initiated. The approved report will be prompty referred through channels to the DE for further appropriate action.

(e) The ENG Form 2187–R will be forwarded to DAEN-REM not later than 15 days after receipt of the approved Report of Excess.

(f) As soon as the areas to be excessed are clearly defined, action will be initiated to assemble all necessary data so that the final SF 118 may be submitted to GSA within 30 days after necessary Congressional clearance is obtained under 10 U.S.C. 2662.

(g) When the estimated value of the property does not exceed $100,000 and preparation of an ENG Form 2187–R is not required, the DE, upon being notified of the approval of the Report of Excess, will notify DAEN-REM of the date the SF 118 will be submitted to GSA.

### § 644.390 Executive Order 11954 surveys of civil works properties.

Procedures to be followed by DEs when civil works properties are surveyed by GSA under E.O. 11954 are contained in chapter 8 of ER 405–1–12.

### § 644.391 Predisposal conference.

(a) Where a substantial Army installation, or portion thereof, is involved, the DE will convene a predisposal conference with representatives of the using command, GSA, and other interested parties. Where an Air Force installation is involved, the Major Air Command will take the initiative in convening the conference. In any cases involving flying facilities, Federal Aviation Administration representatives will be invited. The agenda of the predisposal conference should provide for:

(1) Determinations on maintenance guidelines based on probable future uses of the property with emphasis on agreements concerning responsibility for assumption of care and custody, in accordance with AR 405–90, AFR 87–4, and §§ 644.368 through 644.375.

(2) Review of the SF 118 to assure its acceptability to GSA.

(3) Review with GSA, when appropriate, of the advisability of transferring custody and maintenance responsibilities to GSA at an early date.

(4) Planning for and, to the extent possible, making definite determinations on interim utilization pending disposal by GSA.

(b) It is of utmost importance that excess installations be put to productive use as military operations are phased out. This will do much to lessen the impact of the installation's closing on the economy of the local community. For this purpose, installations, in many cases, will be reported to GSA prior to phase out of military operations. In these cases, the DE has responsibility to insure, to the extent practicable, that other productive use is phased in as military operations are phased out. This can be accomplished only by careful planning and continuous coordination by the DE with using command and GSA. The using command will plan and execute the military phase out. However, the DE will assure that the Report of Excess to GSA specifically identifies and excludes the real and personal property to be retained by the military department. This information is required by GSA for disposal purposes.

(c) A report on the predisposal conference will be forwarded to DAEN-REM. Any difficulties indicated by GSA will be summarized in the report, along with any other problems encountered or foreseen.

(d) When requested, and on an individual project basis, the DE will prepare a real estate disposal study concerning the transfer of custody and maintenance responsibilities to GSA prior to final disposal. This study will be developed in conjunction with appropriate using command and GSA representatives. Its purpose will be to determine whether the transfer of the excess property to GSA would be more economical and in the best interest of the Government. Important benefits to DOD agencies would be reduction in expenditures and personnel of the military departments for such functions. Copies of the study will be furnished the using command concerned for timely review and recommendations.

### § 644.392 Air Force—preliminary report of excess.

The DAF will issue a preliminary real estate disposal directive when a disposal project is forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for clearance. (Air Force screens its own properties for other defense requirements and clears the disposal with DOD and the Armed Services Committees of the Congress.) When the preliminary real estate disposal directive is received, the DE, unless directed otherwise, will proceed to perform all necessary actions in coordination with the installation commander concerned, for submission of a preliminary Report of Excess to GSA.

### § 644.393 Final report of excess to GSA.

Where a preliminary Report of Excess is made to GSA, the DE will promptly finalize the report upon receipt to the final Air Force disposal directive. In all cases where a disposal is reported to the Armed Services Committee, the DE will furnish HQDA

(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

when it intends to surrender the premises at the expiration of the lease. However, the lessor should be informed, as far in advance as possible, of the Department's intention to vacate, in order that he may plan for a new tenant for other use of the premises. Where a lease provides for a continuing renewal without notice, the DE will ascertain in advance of the beginning of each fiscal year whether the using service has need during the next fiscal year for the premises. When the premises are no longer required, a notice of termination will be served in accordance with the terms of the lease. In the event the lease does not provide for termination by the Government, but the lessor will consent to termination, either in its entirety or partially, a supplemental agreement should be entered into to terminate or amend the lease as of the date the premises will be vacated, Government improvements removed, and restoration completed.

(a) *Forms of Notice of Termination.* Where leases provide for restoration, Notice of Cancellation (Restoration) will be prepared in sextuplet in accordance with Figure 11–11 in ER 405–1–12. Notice of Cancellation, Figure 11–12 in ER 405–1–12, will be used for leases which do not provide for restoration or for leases where written notice requiring restoration has been submitted by the lessor prior to termination. Notice of termination will be prepared on the letterhead of the DE concerned, who will assign his own form-letter number.

(b) *Manner of serving Notice of Cancellation.* The Notice of Termination must conform to requirements of state law, and will, whenever possible, be served personally upon the lessor. In some states, to be legally effective personal service is mandatory, unless expressly waived. The lessor will be requested to execute the acknowledgment of receipt of notice on the form. Where the service is effected by registered or certified mail, a return receipt will be requested and a sufficient number of days (in addition to the stipulated period of notice) will be allowed for transmission and receipt of notice. The return receipt properly signed will be evidence that full notice required by the lease has been given. Should the owner refuse or fail to acknowledge receipt of the notice, the officer serving the notice will so certify thereon, giving the date and method of service. In the case of an absentee lessor, where time will not permit use of certified or registered mail for effecting service, notice will be given by telegram to be delivered, not telephoned, to the addressee. In the case of notice by personal service, any available Army facility or personnel in the lessor's locality may be used.

(c) *Distribution of Notice of Termination.* The original notice of termination will be delivered to the lessor; one copy to the finance and accounting officer who pays the rental; one copy to the using service; and one copy to the DE office files.

### § 644.446 Vacation and protection of premises.

The DE will take action to insure that the premises are vacated by the using service on or before the date specified in the termination notice (or the date of expiration of the lease where formal notice is not required), and will assure provision is made by either the using service or the DE, as appropriate, for proper protection of the property pending the transfer of custody to the lessor pursuant to §§ 644.368 through 644.375 and AR 405–90.

### § 644.447 Joint survey of premises.

(a) *When required.* As soon as practical after restoration is requested by the lessor, a terminal condition report to reflect the condition of the leased property as of the termination of the lease, and a terminal survey to determine the extent of restoration required, if any, will be prepared. The lessor will be invited to have his estimators accompany the survey party. The lessor's estimates of restoration costs should be obtained promptly, and included in the terminal survey for purposes of comparison in accordance with paragraph (c) of § 644.454. Survey and condition reports will not be limited to items for which the lessor specifically requests restoration, but will include all items which the DE determines should be restored in order to fulfill the Government's obligation under the lease.

(b) *Contents.* The report will show, in detail, the work items necessary to place the premises in as good a condition as they were at the time they were taken over by the Government, as disclosed by the survey and condition report made at that time, reasonable and ordinary wear and tear, damages by the elements, or circumstances over which the Government has no control, excepted.

(c) *Housing leases.* The tenant of leased housing is personally responsible for damage to the property, beyond reasonable and ordinary wear and tear, resulting from his acts, the acts of members of his family, his invitees and licensees. Restoration of leased housing therefor should be coordinated with the using service to minimize payments for repairs which are the obligation of the Government's tenant.

### § 644.448 Limits on government obligation to restore.

The standard lease forms may provide that the Government will, if stipulated notice is given by the lessor, restore the premises to as good a condition as they were in at the time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. This requirement is subject to certain limitations.

(a) *Restoration not to exceed fee simple value.* The cost of restoration, or settlement in lieu thereof, will not exceed the fee simple value of the property restored to the condition that existed at time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. The valuation should be fixed as of the time of termination of the lease.

(b) *Where estimated cost of restoration exceeds diminution in value.* When it appears that the estimated cost of restoration substantially exceeds the diminution in the value of the premises, occasioned by the Government's use and the damage therefrom, an appraisal will be made of the present value of the property in its unrestored condition and a separate appraisal will be made of the present value of the property, assuming restoration is accomplished as provided in the lease. The difference between the unrestored and restored value, as determined by comparison of the appraisals will be the amount of diminution in the value of the lessor's property and will be the maximum amount of the restoration obligation. As to the measure of damages to be used in establishing the Government's restoration obligation under leases which contain the standard restoration provision, the Comptroller General decided that,

> This office would not be warranted in concluding that any greater amount could be legally expended for restoration or paid to the lessor in lieu thereof than the amount by which the market value of the premises has been diminished

(28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

### § 644.449 Requirement for notice by lessor.

Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; Simpson vs. United States, 172 U.S. 372; United States vs. American Sales Corp., 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; Pac. Hardware Co. vs. United States, 49 Ct. CL 327, 335). However, it has been held

in the case of Smith vs. United States, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B-48678, 10 April 1945, the Comptroller General expressed the following views along this line:

(a) In leases pertaining to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a stipulation excepting restoration from the provisions of the release may be regarded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States.

(b) In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to support a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

(c) Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

(d) As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restoration, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

### § 644.450 Items excluded from usual restoration obligation.

Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the lease should be included in the restoration if they have not been maintained adequately by the Government and are not in the required condition upon the termination of the lease.)

(a) Foundation work.

(b) Waterproofing or membraning.

(c) Exterior tuck pointing.

(d) Cleaning or repair of catch basins, cesspools, or manholes.

(e) Repair of: (1) Interior unfinished walls.

(2) Unfinished hollow tile, concrete block, or gypsum block walls.

(3) Floor joints, roof trusses (including roof boards and roofing), and framing timbers (including studs, sheathings, and exterior surface).

(4) Insulating materials in walls necessitated by leakage in walls or roofs.

(5) Damage to plaster caused by leakage in wall or roof.

(6) Windows and floors, where the damage is caused by elements or inadequate hinging, counterweighting, caulking or sealing.

(7) Sheet metal such as eaves, gutters, downspouts, flashings, hips, valleys, skylights, ventilators, and metal ceilings.

(8) Structural steel or iron.

(9) Fire escapes.

(10) Heating systems.

(11) Plumbing systems.

(12) Ventilating systems and air conditioning systems.

(13) Power plants.

(14) Electric wiring.

(15) Lighting fixtures (or replacement).

(16) Sprinkler systems.

(f) Settling or subsidence.

(g) Other structural repairs to buildings or equipment.

### § 644.451 Nature of required restoration.

Restoration by the Government will ordinarily include the following:

(a) Wear and tear beyond that which is reasonable and ordinary.

(b) Damage due to negligence by Government personnel.

(c) Restoration or reinstallations necessitated by alterations or removals by the Government.

(d) Neutralization of unexploded bombs or artillery projectiles, disposition of military scrap, and decontamination of chemically contaminated lands or improvements. (See §§ 644.516 through 644.539).

### § 644.452 Minor restoration cases—determining extent of restoration required.

(a) In minor restoration cases, ENG Form 1440A-R, Joint Terminal Condition Survey, will be used. The Government representative, in these cases, will also make a detailed investigation as to the extent of damages, cost of repairs, and other factors sufficient to properly complete and sign ENG Form 1440B-R, Cost of Restoration. In order to effect economies, the DE may arrange for the utilitization of the services of the Facilities Engineer or the using service to perform joint terminal condition surveys. Such use, however, should be coupled with issuance of proper instructions for guidance of the respective personnel. A restoration case is considered to be minor under the following conditions:

(1) The initial cost of Government improvements or alterations did not exceed $5,000; and

(2) The net salvage value of Government improvements remaining does not exceed $1,000; and

(3) The cash payment to the lessor in lieu of restoration does not exceed $1,000; and

(4) The lessor has agreed to accept a cash settlement in lieu of physical restoration.

(b) *Preparation of ENG Form 1440–R.* Use of ENG Form 1440B-R is premised upon the ability of the field investigator to adequately analyze conditions and develop sufficient supporting data as to the cost of the items of restoration involved. While this form is considered self-explanatory, the following is to be noted:

(1) The procedure hereunder envisions the use of both ENG Form 1440A-R and ENG Form 1440B-R, which complement each other.

(2) The use of ENG Form 1440B-R for estimating restoration costs does not waive the requirements for a proper evaluation of the Government's restoration obligations either as to the legal principles or as to the proper measure of damages.

(3) Distribution of these forms, together with any supporting exhibits, will be accomplished in the same manner as set forth in paragraph (b) of § 644.460.

### § 644.453 Major restoration cases—determining extent of restoration required.

(a) *Engineer estimate and appraisal.* Any restoration case not covered by the definitions of minor restoration case in paragraph (a) of § 644.452 is a major restoration case. A complete engineer estimate and appraisal will be prepared by the DE for use in negotiating a cash settlement, or to determine the cost of restoration, if the work is to be performed by the Government. ENG Form 1440–R, Cost of Restoration, will be used for this purpose. A copy of this form will be transmitted to the General Accounting Office in support of settlements made with landowners in the case of military property and contains the minimum data required by that office. Such transmittal is not required when civil works property is involved. In order to afford a measure of flexibility, ENG Form 1440–R is divided into five parts, each relating to specific factors, to be used as conditions may require.

(b) *Preparation of ENG Form 1440–R.* Comments and instructions for preparation of ENG Form 1440–R are contained in the following paragraphs which are keyed to the item numbers

on the Recapitulation sheet, part I of the form:

(1) ''1'' to ''6'' Self-explanatory.

(2) ''7. Original Cost (Actual or Estimated) of Government-owned improvements, fixtures and alterations: (part 4).'' The General Accounting Office requires that, in all cases involving the relinquishment of Government-owned improvements to lessors in lieu of restoration, and in any other cases where a contract is entered into between the Government and another party to transfer improvements, the original cost of the improvements be given. If not ascertainable, an estimate should be submitted. In exceptional cases, where, because of the circumstances or expense of the work involved, neither the original cost nor a reasonably accurate estimate can be given, an explanation of the facts and circumstances is required. Where structures have been built under contract, or improvements made under contract, a citation to the contract under which the work was performed should be submitted with the original cost statement, estimate, or explanation.

(3) ''8. Estimated Market Value, (Value in place of Government-owned improvements, fixtures, and alterations): (part 4).'' An estimate will be made of the current market value of the buildings or improvements in place. In those cases where it is indicated that the Government-owned buildings or improvements located on leased lands may materially enhance the value of the leased site, an appraiser will estimate the market value of the fee title to the leased area in its unrestored condition. He will also separately estimate the market value of the site, assuming restoration as provided in the existing lease. The difference between the fee title value and restored land value will be reported as the ''value in place'' of the improvements to be sold or otherwise disposed of. ''Value in place'' is defined as the amount by which the improvements involved enhance the market value of the leased site. This value will serve to establish the top sales price expectancy in negotiations with the landowner.

(4) ''9. Gross Salvage Value of Government-owned property: (part 4)''. The ''gross salvage value'' is the highest price obtainable in the open market for Government-owned improvements when sold for use elsewhere than on the leased premises, assuming that no expense to the buyer is involved in the dismantling and/or removal of the improvements from the leased property to the nearest probable market or location of future use. The estimate of gross salvage value should be made in accordance with established property appraisal procedures. Because market demand usually determines the highest and best use to which the components of a group of improvements will be put (e.g., whether a building will be worth more on the market for moving intact to a new site for continued use as a building, or worth more as a stockpile of used construction material), it is important to consider not only prevailing market prices and demand for used construction materials in the vicinity by contacting sources such as local building trades, wrecking companies, used material dealers, etc., but to also give consideration to possible interest by house moving and construction companies and individuals who might utilize improvements intact. Due consideration should also be given in making the estimate to the effect that such facts as the original cost of the improvements, the original cost of the materials therein, and the deterioration or depreciation of the materials in place might have upon the market value.

(5) ''10. Estimated Cost of Dismantling and/or Removal of Government-owned Property: (part 4).'' The estimated dismantling cost and/or cost of removal will be itemized in the appropriate column opposite the itemized listing of improvements on the ENG Form 1440–R (part 4), and the total will be reflected on the recapitulation sheet (part 1). The dismantling cost is the amount of expenditure necessary to accomplish dismantlement in a manner providing the greatest net return to the Government. Net return is the value of the improvements when detached or dismantled, less the cost of dismantling or detaching, and less the cost of removal. The cost of removal is the cost of moving the detached or dismantled improvements to the nearest

probable market or the nearest installation of the Department having adequate storage space. In cases of frame buildings having concrete or similar permanent-type floors or foundations, the cost of removal of such floors or foundations will not be included as an item of dismantling and/or removal cost. Instead, it will be treated as an item in the estimated ''Cost of Restoration other than Cost of Dismantling and Removal'' (Item 12). In developing estimates of gross salvage value and costs of dismantling and/or removal, inquiry should be made of experienced tradesmen, used material dealers, wrecking contractors, etc., familiar with the local market for the types of materials and services involving the current costs of loading, hauling, unloading, cleaning, stockpiling and other economic factors contributing to the current local market value of similar materials in useable form.

(6) ''11. Estimated Net Salvage Value of Government-owned Property: (part 4)''. This amount is obtained by subtracting the estimated cost of dismantling and/or removal (Item 10) from the estimated gross salvage value (Item 9).

(7) ''12. Cost of Restoration other than Cost of Dismantling and Removal: (part 3)''. From information developed by the joint survey of the property, §644.447 of this part, it is the responsibility of the real estate officer, or his representative, to advise the personnel responsible for preparing the restoration cost estimate of the items which will require restoration, repair or replacement under the terms of the lease. A brief statement as to the probable cause of damage, in excess of ordinary wear and tear, or resulting from other than circumstances over which the Government has no control, will be included in the supporting data.

(8) ''13. Total Cost of Restoration: (Item 10 plus Item 12)''. The estimates of cost under Items 10 and 12 will be based on sound estimating practices generally employed for the type of work involved. The estimates will be predicated on performance of the work by contract and, therefore, consideration will be given to justifiable allowances for contractor's profits, insurance, employees compensation payments, and overhead.

(9) ''14. Net Cost of Restoration: (Item 9 minus Item 13)''. In those cases where the cost of dismantling and/or removal of Government-owned improvements (as defined in Item 10), and the other costs of restoration (as defined in Item 12), exceed the gross salvage value (as defined in Item 9), the difference is a minus quantity and constitutes the maximum amount of money which the Government can pay the lessor, in addition to transferring all improvements to him in lieu of restoration and paying rent during the estimated period of restoration (provided such improvements are not considered to have an ''in place'' value). If this is a plus quantity, it represents the minimum amount of cash that the Government can accept from the lessor after transferring to him all items of property or equipment shown in the report, less the allowance for rental during the estimated period of restoration.

(10) ''15. Approximate Time Required for Actual Salvaging and Restoration Operations''. So long as the owner is deprived of use of his property he is entitled to rental stipulated in the lease. A fair allowance will be made in a settlement with the lessor to cover a reasonable time required to fit the premises for use. If all improvements are to be left in place, it may well be that no allowance for rental will be required by the lessor for time required for salvaging.

### § 644.454 Negotiating restoration settlements.

Negotiated settlements in lieu of performance of actual restoration work by the Government are ordinarily favored because they most satisfactorily achieve the objectives of fulfilling the Government's obligations under the lease in the most efficient and economical manner, recouping the greatest amount of the Government's investment in improvements to leased property and maintaining good public relations in the acquisition and disposal of leaseholds. However, because of variable circumstances, this principle cannot be stated as an inflexible rule applicable to every case. It is the responsibility of the DE to carefully consider all possible approaches within

the scope of this chapter and select the best course of procedure in each case.

(a) *Financial limitations which preclude actual restoration.* In view of the limitations of the Government's restoration obligations to amounts not in excess of the fee value of the leased property, or the difference in values of the leased property with and without restoration, actual performance of restoration work is precluded where these amounts would be exceeded, and a settlement in lieu of restoration is in order in amounts not to exceed the limitations indicated.

(b) *Settlement where property enhanced in value by improvements.* Where the leased property has been enhanced in value by the Government's improvements, no restoration should be performed nor payment by the Government made in lieu thereof. Instead, effort should first be made to obtain from the lessor a cash payment to the Government equal to the in place value of the improvements, together with a full release of the Government from any restoration obligations. If the lessor is not willing to pay the in place value, but will offer a lesser amount in excess of the estimated net salvage value, settlement may be reached on that basis. If the lessor will not agree to make payment of any amount, or will offer only an amount which is less than the net salvage value of the improvements, consideration should be given to selling the improvements for removal and accomplishing any remaining restoration by payment in lieu thereof or by actual performance of the work. If it becomes necessary or advisable to arrange for separate sale of any or all of the improvements, the sale should be accomplished in accordance with §§ 644.540 through 644.557. The terms of sale in such case will require the removal of the improvements on or before the expiration or termination of the lease and contains any other special requirements applicable to the particular case, including site restoration. Bids received should be compared with the highest price offered by the lessor, due consideration being given to the cost of restoration, if any, which would remain after removal of the improvements. It must always be borne in mind that the disposition of public property to private parties must be at prices which can be shown to be in the best interests of the Government.

(c) *Reaching agreement on estimates of cost.* The terminal survey and condition reports specify the items to be restored and the lessor's estimate of cost. Those items reflected on the ENG Form 1440–R (part 3) afford comparison between the lessor's and the Government's estimates. Where there is a variance in the estimates and the lessor's total estimate is lower, effort will be made to settle on the basis of his estimate. If the lessor's overall estimate is higher than the Government's, effort will be made to reach agreement on acceptance of the Government's total estimate. If the lessor's estimate is substantially higher on specific items, it may be desirable to disclose the basis on which the Government's estimate is predicated in order to demonstrate its reasonableness. The Government's estimate of cost for items of restoration may be made available to the lessor upon request. When the lessor requests items of work not shown on the Government's estimate, careful consideration will be given to his request, further inspection of the premises made, when necessary, and a determination made as to whether the Government is obligated under the lease to perform the work. If no liability is determined to exist, the lessor will be fully informed as to the reasons for noninclusion in the estimate. If liability is determined to exist, the estimate will be adjusted accordingly. In any case where the existence or extent of the legal obligation of the Government to restore is questionable, the DE will submit the facts, in writing, to DAEN-REM together with his recommendation. No lease restoration settlement will be allowed to become involved in litigation or formal claims procedure without the matter having been submitted to DAEN-REM for review. When a satisfactory cash settlement by the Government cannot be negotiated, the DE is authorized to perform the actual restoration work.

### § 644.455 Claims for loss or damage of personal property.

In some cases, owners have been allowed to store personal property,

owned by them or under their control, on premises leased from such owners by the Government, the personal property not being covered by the lease. The rooms in which this property was stored have been broken into and, upon termination of the lease, it has been found that much of the property is damaged or is missing. Unless the lease specifically places some responsibility on the Government, payment for such damaged or missing property cannot be included in restoration settlements for payment. In the event the lessor refuses to sign a full release, a provision may be included in the supplemental agreement releasing the Government from all liability except for claims for damage, loss, or destruction of personal property stored on the leased premises and not covered by the lease, and the lessor advised that he may submit a claim for the amounts which he considers due him.

### § 644.456 Rent during the period required for restoration.

A sufficent period of time for performance of the restoration, commencing on the date premises are vacated by the Government, will be specified in the Government's estimate, and rent allowed in the settlement during such period to the extent that the lessor is actually deprived of beneficial use. If there is an outstanding maintenance and operation contract with the lessor, contained in either the lease or in an independent instrument, which fixes compensation in addition to the rent, the settlement agreement with the lessor will include the rent and such part of the compensation for maintenance and operation as will be necessarily incurred by the lessor during the performance of restoration.

### § 644.457 Settlement where part of the premises is surrendered.

Where there is a partial reduction of area in a lease requiring restoration, the supplemental agreement may contain a settlement in lieu of restoration of the area surrendered. A waiver of further claims covering the space released will be contained in the supplemental agreement.

### § 644.458 Documenting lease terminations and restoration settlements.

In the case of leases in which there is no obligation to restore, and in all cases of leases where terminal survey discloses no damage to the premises for which the Government is liable, an effort will be made to obtain an unqualified release from the lessor as of the date the premises are vacated and Government improvements removed. Releases will also be obtained as indicated in § 644.462.

(a) *Form to be used.* Releases will be executed, in triplicate, on ENG Form 232–R, Release (Corporation), or ENG Form 231, Release (Partnership), according to whether the lessor is a corporation or partnership. If signed by an attorney or agent, evidence of authority should be attached to the release. If the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11–16 in ER 405–1–12. Distribution of releases will be accomplished in the same manner as set forth in § 644.460.

(b) *Qualified release.* In case the lessor declines to sign an unqualified release, he should be requested to execute an appropriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form.

### § 644.459 Preparation of supplemental agreements effecting settlement.

The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without formal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B-63340, February 1947). Care should be exercised in determining the existence

and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items; instead, the other party to the agreement will be advised of his right to submit a claim. On the other hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

### § 644.460 Supplemental agreement assembly.

(a) *Composition.* Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

(1) Completed Notice of Termination.

(2) ENG Form 340 (Supplemental Agreement Accepting Proposed Restoration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).

(3) Lessor's notice requiring restoration, unless the lessor has signified that restoration is not required.

(4) Joint terminal survey and condition report.

(5) ENG Form 1440–R, or 1440A-R and 1440B-R.

(6) Estimated cost of restoration of leased personal property if not otherwise included.

(7) Statement of cost of any restoration actually performed by the Government.

(b) *Distribution.* An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

### § 644.461 Payment for restoration or settlement in lieu of restoration.

Voucher forms, appropriate to the circumstances, will be used in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

### § 644.462 Performance of restoration work by district engineer—extension of time.

Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or by contract, within the limitations outlined in this subpart. Any contract entered into for such work should provide for required restoration work to be performed on or before the determined effective date of termination of the lease. A complete record of the items of work performed and the costs thereof will be kept. If the lessor, prior to commencement of the work, is not agreeable to executing ENG Form 340, DA Supplemental Agreement Accepting Proposed Restoration, efforts will be made, upon completion of the work, to obtain a release on ENG Forms 232–R, or 231, or on ENG Form 341 in the event of a cash settlement for that part of the restoration not performed. Where the Government is obligated to perform restoration and remove improvements, and it cannot be accomplished by the Government prior to the effective date of termination, a supplemental agreement will be prepared, antedating the effective date of termination, for such periods as may be required to effect restoration and to remove improvements, if the lessor is unwilling to terminate the lease and rental thereunder, with the reservation that the Government will have a right upon the premises for the purpose of performing restoration, conducting sales of improvements thereon, or doing similar acts related to restoration.

### § 644.463 Termination and settlement of leasehold condemnation proceedings.

(a) *Leasehold condemnation termination assembly*. When leasehold estates in land, or other similar limited estates or terms for years, acquired or in the process of acquisition, have been determined surplus a prompt report will be made to DAEN-REM containing the following items of information as appropriate and necessary to a full understanding of the proposed disposition action:

(1) Name of project and using service.

(2) Style and civil number of the condemnation proceedings in which the land is involved.

(3) Particular tract or tracts involved.

(4) A citation of the authority pursuant to which the surplus status has been determined.

(5) Three copies of ENG Form 1440–R, or 1440A-R and 1440B-R.

(6) The proposed date of vacation of premises by Government.

(7) The term condemned and rights of the Government as to extension and cancellation thereof.

(8) Whether a declaration of taking, or supplement thereto, has been filed and the amount of deposit, if any.

(9) Whether an award or order for payment has been made, and the amount of the owner's withdrawal, if any.

(10) The estimated rental cost through the end of the term acquired in the condemnation proceeding.

(11) The estimated fair rental value of the land for the period of occupancy by the Government, including time for restoration.

(12) Recommendation as to the advisability of abandoning the proceeding.

(13) Request for termination of condemnation proceeding.

(b) *Action by Chief of Engineers*. DAEN-REM will review the termination assembly and settlement proposal recommended and, if approved, recommend to the Department of Justice a basis for settlement at the same time requesting the Department of Justice to move for termination or conclusion of the proceedings.

### § 644.464 Negotiating stipulation where proposed settlement not acceptable.

Should the court overrule the motion for abandonment, or should it appear that claims for damages will be interposed by the property owner, the responsible DE and the Department of Justice representative will negotiate with the owner for the purpose of obtaining his consent to the abandonment of the condemnation action. The Government will agree to pay the owner a sum representing the rental value of the premises for the period of occupancy by the Government, plus the cost of restoration as determined under §§ 644.452 and 644.453. Such estimate will include the value of personal property, buildings, crops, and other property damaged, destroyed or lost by the Government. DAEN-REM upon recommendation of the DE will request the amendment of the proceeding to include the taking of any property for which compensation is to be paid. The same criteria for settlement with lessors as under a negotiated lease will govern. In the event the landowner will not agree to settle, his best offer will be submitted to DAEN-REM, with the DE's recommendation, for consideration. If a tentative settlement is reached, the terms will be included in a stipulation to be filed in the condemnation proceedings, after approval by DAEN-REM and the Department of Justice, which stipulation will specifically provide:

(a) That the property owner releases and relinquishes all claims of any nature whatsoever which have arisen, or may arise, out of the Government's occupancy of the property; and

(b) That the owner consents to the abandonment and dismissal of the condemnation proceedings. Where the settlement amount is to be paid directly to the owner by the DE in lieu of deposit in the proceedings, the stipulation will so provide.

### § 644.465 Physical restoration where stipulation not obtained.

If such stipulation is not obtainable, then, whether or not a declaration of taking has been filed, the owner will be requested to designate, in writing, the restoration for which he believes the

Government is liable. The Government will restore the property to the condition existing at the time of first entry by the Government, except for reasonable and ordinary wear and tear, damage due to acts of God, or circumstances over which the Government has no control. The cost of restoration or settlement in lieu thereof will be limited as outlined in this subpart.

### § 644.466 Release and record of physical restoration.

The responsible DE, upon completion of restoration, will make every effort to obtain a release of further claims for damages. A complete record of all items of restoration and the cost will be kept for use at the final hearing in condemnation or in any collateral proceedings, in the event a release is not obtained. Where litigation is anticipated, photographic evidence of work peformed will be obtained.

### § 644.467 Condition reports.

Survey and inspection reports covering the real estate, and inventory and condition reports covering the personal property located therein, made prior to first entry by the Government under condemnation proceeding, will be compared with the condition shown by similar reports made when the using service vacates the property.

### § 644.468 Settlement of claims.

Claims for damages or restoration filed in condemnation cases, when practicable, will be settled in the condemnation proceeding to avoid separate suit by the owner to recover compensation to which he may be entitled. In such cases request will be made of DAEN-REA-C to have the proceeding amended to enlarge the issues to include restoration.

### §§ 644.469–644.471 [Reserved]

## Disposal of Buildings and Other Improvements (Without the Related Land)

### § 644.472 Authority.

Under authority vested in the GSA by the Federal Property Act, and the delegation of such authority made by GSA in FPMR 101–47.302–2, the Department of the Army is designated as the disposal agency for the following property:

(a) Leases, permits, licenses, easements, and similar real estate interests held by the government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

(b) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

### § 644.473 Methods of disposal.

Excess buildings and other improvements may be disposed of by the following methods:

(a) By demolition for utilization of salvage materials in the overall Army or Air Force construction or maintenance program. Screening with other military departments is not necessary for this purpose.

(b) By transfer to another Federal agency.

(c) By assignment to the Department of HEW for disposal for health or educational purposes pursuant to section 203k(1) of the Federal Property Act (FPMR 101–47.308–4).

(d) By sale intact for removal from site to the most appropriate of the following, according to the circumstances:

(1) Eligible public agencies (§§ 644.400 through 644.443 and §§ 644.540 through 644.557).

(2) Boy Scouts of America (§§ 644.540 through 644.557).

(3) Military chapel buildings and chapel equipment to nonprofit organizations for use, first as a shrine or memorial and, second as a denominational house of worship.

(4) Owner of the underlying land as a part of restoration settlement where disposal of a leasehold is involved.

(5) An emergency plant facilities contractor.

(6) The general public, through competitive bidding, unless special circumstances warrant a negotiated sale for a specific purpose.

(e) By donation, abandonment or destruction.

### § 644.474 Determining method of disposal.

DE's are designees of the Chief of Engineers under AR 405–90 to determine the method of disposal authorized by law or regulations which is most advantageous to the Government. Where alternatives are presented, there will be an affirmative finding that the method of disposal approved is most advantageous. In the exercise of this authority, due consideration will be given to the effect of particular methods of disposal on safety and sanitation in the area, the proposed or probable future utilization of Government-owned sites by the Government, or in the case of leased lands, the restoration obligations of the Government under the lease. In order to assure consideration of these factors, disposals by transfer to other Government agencies or by sale intact will be brought to the attention of the installation commander or his representative prior to initiation of disposal action. Reasonable requirements for site clearance consistent with the foregoing criteria should be favorably considered and disposal conditioned accordingly, notwithstanding the fact that such action may result in a greater burden to transferee agencies or, in the case of disposal by sale intact, may result in a reduction in the monetary return which might be reasonably expected in a sale involving less stringent site clearance requirements. DAEN-REM will be informed of any instances of excessive or unreasonable requirements with respect to site clearance. The DE will determine by inspection and survey the method to be used in disposal of buildings and improvements.

### § 644.475 Excessing Army military and Air Force property.

The procedures for placing buildings and improvements in excess status are set forth in AR 405–90 and AFR 87–4. In instances of land acquisition where buildings and improvements were acquired incident thereto, DEs are designated by the Chief of Engineers under AR 405–90 to make disposition of this property. Coordination with the installation commander concerned is required. When, under AFR 87–4, the responsible DE is called upon by the Air Force Command to furnish an estimate of the value of buildings and improvements for the purpose of determining the approval authority for excessing the property, no formal appraisal will be made. If, in his opinion, the total property exceeds a value of $50,000, he will furnish only a rough estimate of its value in round figures. If the property is, in his opinion, of a value of $50,000 or less, he will limit his statement to this fact and will not specify an estimated valuation.

### § 644.476 Excessing civil works property.

The DE are authorized to approve the disposal of buildings and improvements acquired incidental to the acquisition of land in reservoir areas, regardless of the original cost thereof, when they are in the way of authorized construction or when the land upon which they are located is to be permanently or frequently inundated. DEs may authorize the disposal of buildings and other improvements in any one or more of the following categories, which are located on lands which are not excess and which are not expected to become excess, and the sale is to be made after advertising:

(a) Buildings or improvements on land acquired by the Government determined to be available for disposal pursuant to ER 735–2–1 (Property Accounting Procedures-Civil).

(b) Buildings or improvements which cannot be kept in repair at a reasonable cost.

(c) Buildings or improvements which are dangerous to life or likely to damage adjoining structures or have become hazardous or nuisances.

(d) Buildings or improvements which are damaged or unsuitable for public service.

(e) Buildings or improvements constructed by the Federal Government which occupy or interfere with sites for new construction or for other civil works purposes.

(f) Temporary buildings or improvements which have served the purpose for which they were constructed.

### § 644.477 Civil works property—reimbursement of appropriation.

Under title 33, United States Code, section 558, the proceeds from a sale or transfer of buildings or improvements may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, on non-excess land come within the purview of this law. For further instructions on disposition of proceeds, see § 644.322.

### § 644.478 Demolition of buildings and other improvements for utilization of salvage material.

With respect to DA property, demolition may be undertaken by the DE of buildings on non-excess land made available for disposal, when the salvage is to be used in construction or maintenance work by the Corps of Engineers or upon specific request from another service where funds for the purpose are made available. Real Estate funds will not be used for such demolition. Determination of practicability for use of buildings or improvements in authorized new construction at other sites or for salvage of materials will be made by the DE in accordance with existing instructions relating to use of materials in new construction. Where restoration of leased premises is being performed, it is the responsibility of the Corps of Engineers to perform the necessary demolition work as part of the restoration obligation, as set forth in §§ 644.444 through 644.471. Demolition may be accomplished under contract when special or expert services are required for removal of certain types of structures and funds are available therefor. Unused salvage materials will be turned over to redistribution and salvage officers for redistribution or disposal in accordance with existing regulations pertaining to personal property. The relocation of buildings or improvements on the same installation or for re-erection at another installation is not to be accomplished as a real estate function (AR 420–70). Further, it is provided in AR 420–70 that demolition of buildings or improvements where retention of the salvage for use at the installation is approved, or where no requirement or market is found for buildings or improvements approved for disposal by the Corps of Engineers, is a facilities engineering responsibility. Pursuant to AFR 87–4, disposal of AF buildings and improvements by sale will be accomplished by the Corps of Engineers, but all disposal of such property by salvage will be accomplished by the base commander.

### § 644.479 Authority for transfer of buildings and improvements to other Federal agencies.

Buildings and other imporvements which have been screened for defense requirements, as outlined in §§ 644.333 through 644.339, may be transfered to another Federal agency as hereinafter outlined. The authority for the transfer of such property to other Federal agencies is outlined in §§ 644.400 through 644.443. The responsible DE is authorized to transfer buildings or structures for removal from the site, which have been made available for disposal by proper authority, upon receipt of a request signed by an official of another Federal agency.

### § 644.480 Procedure for transfer.

Transfer of buildings to other Federal agencies will be accomplished by DD Form 1354. An estimate of value will be shown on DD Form 1354, Transfer and Acceptance of Military Real Property, or other forms used and, in the case of transfer without reimbursement, the following footnote will be made: ''Transfer to (Department or Agency), adjustment of funds not required.'' When the transfer is made at the direction of GSA, an explanation therefor will also be made on the form. Buildings and other improvements which are reported to GSA for screening against requirements of other Federal agencies (§§ 644.348 through 644.367) will be transferred to another Federal agency only at the direction of GSA and for the amount of reimbursement, if any, determined by GSA. Buildings and improvements which are not required to be reported to GSA will be screened against requirements of other Federal agencies by the responsible DE as provided in §§ 644.333 through 644.339.

Upon request by a Federal agency for transfer of such property, the responsible DE will determine the amount of reimbursement, if any, in accordance with the criteria outlined in §§ 644.400 through 644.443.

### § 644.481 Responsibility of transferee.

Where buildings or other improvements are on lands leased to the United States, the agency requesting the buildings will be expected to remove the building and restore the premises, as required by the terms of the lease, or to accept an assignment of the lease together with all obligations thereunder. Where the buildings or other improvements are to be removed from non-excess land, the transferee agency will be expected to perform reasonable site clearance as may be required by the commanding officer.

### § 644.482 Assignment to Department of HEW or successor agencies.

Pursuant to delegation of authority contained in FPMR 101–47.308–4, as set forth in §§ 644.400 through 644.443, the responsible DE may assign buildings or other improvements made available for disposal and not required for Federal purposes to HEW upon receipt of request therefore from the appropriate regional representative of that department for disposal for public health or educational purposes. Assignments will be effected by letter addressed as indicated in § 644.483. Further, pursuant to delegation of authority the Department may disapprove within 30 days after notice from HEW, any transfer of property proposed to be made by that agency for such purpose. The DE will be guided by the policy set forth in §§ 644.400 through 644.443 in regard to the delegation to disapprove transfers by HEW.

### § 644.483 Notification of Department of HEW or successor agencies.

When buildings or other structures are reported to GSA for screening pursuant to §§ 644.348 through 644.367, the Reports of Excess are available to HEW by the Regional Office of GSA, and no notice of the proposed disposal need be given by the DEs. Where buildings and other structures are not reported to GSA simultaneously with circularization of other Federal agencies, HEW will be notified in writing of the availability of such structures. Such notification will be addressed to the appropriate field representative of HEW, and will include the following information:

(a) A brief description of the buildings and improvements, including dimensions of buildings, types of construction, and demountable characteristics, if any.

(b) The extent of building site clearance expected.

(c) That the improvements must be removed and site clearance completed within a specified definite period from the date of assignment to HEW (usually 60 to 90 days, depending upon the size of the removal operation).

(d) When improvements may be inspected.

(e) That the improvements will be withheld from advertisement for bids for a period of 20 days from the date of the notification, unless the office submitting the notification is sooner informed in writing that such property is not needed for school, classroom, or other educational use or for use in the protection of public health, including research. If within the 20-day period, notice is received of a potential need, the property may be held an additional 45 days until a certification of need or request for assignment is received.

### § 644.484 Procedure for disposal through the Department of HEW or successor agencies.

During the period held, action preparatory to the publication of Invitations for Bids and Specifications of Sale of Buildings and Improvements will be taken in order to minimize the time lapse between the expiration of the 20-day period and the beginning of the sale procedure. Inquiries received prior to the expiration of the holding period from state or local agencies or qualified organizations seeking the purchase of available improvements for health or educational purposes, will be referred to the appropriate field representatives of HEW.

(a) Final disposal is not effected until the improvements have been transferred by HEW to an eligible recipient. Therefore, in the letter of assignment, HEW will be requested to furnish to the

responsible DE, three copies of the sales contract. One copy of the contract will be forwarded to the officer accountable for the property, together with a certificate of performance upon completion of the operation (the latter to be furnished by the HEW contracting officer), and one copy will be furnished to the property auditor charged with periodic audit of the property records.

(b) Should HEW fail to consummate disposition of the improvements after assignment to it and request cancellation of the assignment, the assignment may be cancelled by a letter of cancellation and appropriate disposition of the improvements affected. If there is an excessive number of such requests, DAEN-REM will be informed in order that corrective action may be requested of HEW.

### § 644.485 Sale of buildings and other improvements.

Buildings and other improvements made available for disposal by competent authority and not needed for further Federal utilization, or assigned to HEW, will be diposed of by sale by the responsible DE. Sales will be accomplished in the following manner:

(a) *Sale to lessor where restoration is not required.* Where the terms of a lease do not require restoration by the Government, it may nevertheless be in the best interest of the Government to negotiate a sale of the improvements to the lessor. In such cases, the DE is authorized to negotiate such sale where the net salvage value of all improvements located on the premises involved in any one lease is less than $1,000, and the sales price is determined to be as high as can be expected under the circumstances and compares favorably with the Government estimate prepared in accordance with paragraph (d) of this section.

(b) *Sale under options.* All leases or other rights of occupancy will be examined to determine whether the owner of the land has an option to purchase buildings or other improvements. See § 644.486 for sale of improvements constructed under Emergency Plant Facilities or similar contracts.

(c) *Sale to eligible public agencies, the Boy Scouts, and the public.* The sales procedure, including notice to eligible public agencies and advertising, set forth in §§ 644.540 through 644.557 will be followed in the sale of buildings or other improvements.

(d) *Appraisal.* Except as otherwise provided in §§ 644.540 through 644.557 buildings and other improvements will be appraised prior to sale. Except as provided in § 644.490, appraisal will be based on the highest and best use which may be for (1) removal and use intact; or (2) for dismantling, and removal and stockpiling the salvageable material for reuse or sale.

### § 644.486 Disposal of buildings and improvements constructed under emergency plant facilities (EPF) or similar contracts.

Procedure for the disposal of property constructed under a facilities contract on lands neither owned by nor leased to the Department is set forth as follows:

(a) *By using service.* Disposal of structural components as well as equipment may be accomplished by the using service. The term ''structure'' is defined to mean plant equipment which:

(1) Is held under a facilities contract of the Department;

(2) Is not readily severable;

(3) Is a separate building or a complete structural addition to a building in which the Government otherwise has no interest, such as a wing, and in which a defense contractor carries on part or all of his defense production.

(b) *By the Corps of Engineers.* Where disposal of structures, as well as other plant equipment located within such structure, is to be accomplished by the Corps of Engineers, instructions will be issued as to the extent to which the Corps of Engineers will participate in such action. Subject to special instructions by DAEN-REM, the following coordinated actions will be taken:

(1) The using service will report to the Corps of Engineers the property which is excess to the Department's needs.

(2) The excess directive report will include the designation by name and address of a responsible officer of the using service to join with the DE concerned as a representative of the Chief

of Engineers. These two representatives will meet with the contractor within seven days of their appointment to determine his interest in acquiring all or any part of the facilities. This determination will be made in the shortest possible time.

(3) The meeting with the contractor will promptly establish those facilities to be retained by the contractor and those to be declared excess. Waiver of existing options will be obtained where necessary.

(4) Equipment that is of no interest to the contractor will be disposed of by using service in accordance with applicable regulations.

(5) Custody of and accountability for the entire facility remains with the using service until other arrangements have been completed.

(6) The Corps of Engineers will complete negotiations for property to be retained by the contractor as rapidly as possible.

(7) When an agreement has been reached with the contractor, the DE or his contracting officer may execute the supplemental agreement to the lease or facilities contract transferring improvements, including machinery and equipment as a unit. Authority for the transfer should be recited in the supplemental agreement. In the case of a supplemental agreement to a facilities contract, authority will be obtained from the using service through its local representative for the DE or his contracting officer to sign the supplemental agreement transferring the improvements, including machinery and equipment to the contractor. (Figure 11–18 in ER 405–1–12 is the suggested format for Supplemental Agreement to Emergency Plant Facilities Contract.)

(8) Upon completion of negotiations, the responsible DE will issue instructions to the using service to dispose of equipment not included in the final negotiations in accordance with applicable regulations. Accountability for the property will be transferred at this time to the new owner or, in the case of real property retained by the Department, to the Corps of Engineers.

(9) Property not disposed of to the contractor will be disposed of in the same manner as improvements located on surplus leasehold property.

### § 644.487 Procedure for disposal of surplus chapels.

By direction of the President and pursuant to GSA and Army regulations, special procedures have been established for disposal of chapels. Surplus chapels must be segregated from other buildings for sale intact, separate and apart from the land, for use as shrines, memorials, or for religious purposes. Where the chapel is located on surplus land and it is determined the chapel may properly be used in place, a suitable area of land may be set aside for such purposes and sold with the chapel (§ 644.430).

### § 644.488 Soliciting applications for purchase of chapels.

Promptly upon receipt of an approved DA Form 337 (Request for Approval of Disposal of Building and Improvements) or AF Form 300, the DE will solicit applications by public advertising. Advertising will consist of publication of notice in newspapers, paid advertising when necessary, posting of notices in public places, and mailing of invitations to all known local churches. A period of thirty (30) days will be allowed in which to file written applications. Instructions will provide that the applicant will give his name, address, and denomination if applicable. The advertisement will describe the chapel, give its location, terms and conditions of sale, and the time and place where application must be filed. The advertisement will also state that the sale price will be made available upon request of interested parties, and that the Chief of Chaplains will select the purchaser. To assist that office in making a recommendation, the following information should be included in applications for the purchase of chapels:

(a) Purpose and intent of the use of the chapel.

(b) Facilities currently being used by the church/organization applying.

(c) Membership size of the church/organization.

(d) History of the church/organization and when established locally.

(e) Denomination and/or organization.

### § 644.489 Conditions of sale of chapels.

When sold under the provisions of § 644.490, chapels shall be sold subject to the condition that during their useful life they will be maintained and used as shrines or memorials, or for religious purposes, and not for any commercial, industrial, or other similar use. The contract or deed of sale will provide further that in the event the purchaser fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference, if any, between the appraised fair market value of the chapel, as of the date of the sale, without restriction on its use, and the price actually paid. This difference should be figured at the time of sale and included in the contract of sale or deed of conveyance.

### § 644.490 Determining price and provisions of sale for chapels.

(a) *Price.* The sale price of the chapel structure in the case of sale for use as a shrine, or memorial, or denominational house of worship, will be at its fair value in the light of the conditions imposed relating to its future use, and the estimated cost of removal from the site. Appraisals made to establish the price of specific chapels will be predicated on:

(1) The fair value of the material in place, less the cost of dismantling, removal of the material to the outside limits of the installation, and the cost of restoring the site.

(2) The restrictions imposed on the future use of the chapel with due regard to the difference between the fair value price obtainable in the open market and that which might be obtainable in the limited market to which sale is restricted.

(3) In addition to the criteria set forth in paragraphs (a)(1) and (2) of this section cognizance will be taken of the prevailing prices of chapels being sold by other disposal agencies within the general area in which chapels are being disposed of by the Corps of Engineers.

(b) *Provisions of sale.* (1) Disposal of chapels which are not excess or surplus will be conditioned on the removal of the chapels from the premises. In the disposal of chapels located on excess or surplus leased land, no commitments will be made to purchasers for the continued use of utilities and services (sewer, water, electric, fire protection, guarding). Arrangements may be made between the lessor of the premises and the purchaser to leave the chapels in place, provided the lessor releases the Government from any and all obligations to restore the premises occupied by the chapel.

(2) Care will be exercised that, prior to the disposal of the chapel, equipment such as organs, hymn books, and other ecclesiastical furnishings have been removed or shipped in accordance with applicable regulations.

(3) All copies of the contract evidencing the sale of chapels will be accompanied by copies of the instructions, if any, received from the Chief of Chaplains authorizing the disposal. If no such instructions have been received, the DE will attach a statement that in the absence of instructions, all known interested parties have been contacted and that the disposal has been made after due consideration of applications, the uses to be made of the chapel building and the need therefor.

### § 644.491 Coordination with the Chief of Chaplains.

The DE will submit applications for the purchase of chapels to DAEN-REM, who will request the Chief of Chaplains to select the purchaser and advise DAEN-REM of his selection. Where no applications are obtained as a result of the advertising, the DE will so advise the Chief of Chaplains, reporting steps taken to obtain a purchaser, and recommending that the chapel be sold without conditions, in the same manner as provided for disposal of other buildings. If the Chief of Chaplains does not approve this recommendation or issue other appropriate disposal instructions within a period of 60 days, DAEN-REM will be informed.

### § 644.492 Report on disposal of chapel.

As soon as practicable after the sale has been consummated, notification of disposal of chapels will be made by the DE direct to the Chief of Chaplains, with a copy to HQDA (DAEN-REM) WASH DC 20314, by letter, which will contain the following information:

(a) Location and brief description of chapel or chapels.

(b) Reference to disposal instructions, if any, received from the Chief of Chaplains.

(c) Identity of purchaser and price paid.

### § 644.493 Release of restrictions on chapels sold.

Where the purchaser fails to maintain and use the chapel in accordance with the conditions of sale, or the purchaser requests release of the conditions, the facts will be reported to DAEN-REM with appropriate recommendations. DAEN-REM may release the purchaser from the conditions of sale without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was sold, or that such release will not prevent accomplishment of the purpose for which the property was sold.

### § 644.494 Donation, abandonment or destruction.

(a) *General.* Improvements may be abandoned, destroyed or donated to a public body, upon a finding in writing by the DE (but in no event shall such finding be made by the official directly accountable for the property) that the property has no commercial value or that the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, or that abandonment or destruction is required by military necessity, or by considerations of health, safety or security.

(b) *Finding of Fact.* The finding will be prepared as a separate document headed: Finding of Fact for _____ The finding will be sufficiently complete within itself to justify the decision to donate, abandon, or destroy the property proposed, without outside reference. It will be drafted to provide, where the finding is made by the District Engineer, for approval by the Division Engineer. Finding of fact concerning property which had an original cost in excess of $500,000 requires the approval of DAEN-REM. A copy of each such finding, so approved, will be forwarded by the DE to the regional office of GSA.

### § 644.495 Donation to a public body.

A public body, as defined by GSA for this purpose, means any State, territory or possession of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, or any agency of the Federal Government. Property as to which findings of fact have been made, may be donated to a public body.

### § 644.496 Abandonment.

Abandonment, as used herein, has reference to cases where the lessor or a permittor Government agency is unwilling to accept transfer of buildings or improvements in lieu of restoration, but is willing to permit the Department to leave buildings or improvements having no net salvage value on their premises. It is desirable to transfer title of or accountability for improvements having no net salvage value to lessors or permittors instead of obtaining their consent to abandon such improvements. Abandonment as authorized herein will not be a means for dropping accountability or responsibility for maintenance of improvements on non-excess land.

### § 644.497 Destruction.

Disposal by the Corps of Engineers, as authorized in AR 405–90, does not contemplate expenditure of funds for destruction of improvements which have no sale or salvage value. Accordingly, where such improvement have been approved for disposal by the Corps of Engineers, they will be referred back to the appropriate Army of Air Force command for disposal action under AR 405–90 or AFR 87–4 as appropriate. However, improvements with little or no salvage value may be included in the same item with other improvements being offered for sale which are more attractive improvements without an expenditure of Government funds.

§§ 644.498–644.500 [Reserved]

DISPOSAL OF STANDING TIMBER, CROPS, AND EMBEDDED GRAVEL, SAND AND STONE

### § 644.501 Authority.

(a) *Crops.* Crops are defined as personal property in FPMR 101–47.103–12 and are disposed of under FPMR 101–45.309–1 (Sale, Abandonment, or Destruction of Personal Property). The Corps of Engineers does not dispose of crops on military lands. However, when lands are in the custody of the Corps for construction purposes, the Corps will dispose of crops thereon.

(b) *Standing timber, embedded gravel, sand or stone.* These are defined as real property (FPMR 101–47.103–12(c)). The holding agency is designated as disposal agency for standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land. (FPMR § 101–47.302–2).

(c) *Small lots of standing timber.* In accordance with AR 405–90, installation commanders are authorized to sell small lots of standing timber with a value not more than $1,000 that are in conformity with the installation Forest Management Plan. Public notice is required of the availability of the timber for sale. The total of such sales in any one calendar year will not exceed $10,000.

(d) *Restriction on removal of sand, clay, gravel, stone and similar material.* The Army is without authority to remove such products from public domain land located within the military installation where the material is to be used off the installation. With permission of the Secretary of the Interior, such material may be removed pursuant to 30 U.S.C. 601. In such cases, DAEN-REM will obtain the necessary permission.

### § 644.502 Determination of excess status.

(a) *Military.* The procedure for excessing and disposal of standing timber and embedded gravel, sand and stone is outlined in AR 405–90. The procedure for the determination of availability of timber for disposal is outlined in AR 420–74.

(b) *Civil works.* (1) When the DE believes that standing timber, embedded gravel, sand or stone (whether designated for disposition with the land or by severance and removal from the land) is excess to requirements, he will submit a recommendation to DAEN-REM for approval. The DE is authorized, however, to dispose of standing timber or other forest products required to be removed incident to construction and operational requirements of the project; that which is generated incident to recreational development or the management of public park and recreational areas or wildlife management areas; or that which is generated in accordance with approved forest management supplements to the approved Master Plan (ER 1130–2–400). As far as practicable, high grade species in short supply will not be disposed of, but will be retained for possible defense requirements. When the amount for sawtimber under the above criteria available for disposal exceeds 5,000,000 board feet, request will be made to DAEN-REM, for determination of whether there are any defense requirements for the timber. The request will include an estimate of the amounts by species and the range in sizes. All timber disposals, except those involving timber below the project clearing line or in construction sites, will be compatible with the planned use of the areas for the purpose to which they are allocated in approved Master Plans and such disposals will be incidental to that use. The DE may authorize the disposal of growing crops when their disposal is deemed necessary to prevent waste.

(2) Under the provisions of section 5 of the act of 13 June 1902, as amended, (33 U.S.C. 558), proceeds from disposal of these items on civil works property may be returned to the appropriation.

### § 644.503 Methods of disposal.

Standing timber, crops, sand, gravel, or stone-quarried products, authorized for disposal in accordance with the foregoing, will be disposed of by transfer to another Federal agency or by sale.

### § 644.504 Disposal plan for timber.

The DE take appropriate action to assure that construction contractors are not authorized, in the clearance of

construction sites, to burn or otherwise destroy merchantable timber unless circumstances exist which preclude sale or salvage. In preparing for disposal of timber, a disposal plan will be prepared which will include the following:

(a) Live timber and merchantable dead timber will be marked for cutting in accordance with the land management plan, Master Plan, or forestry supplement thereto, and cutting will be limited to the timber so marked. The disposal plan will contain sufficient information in this respect to permit preparation of specifications for inclusion in the invitation for bids.

(b) Utilization of existing roadways and construction of new roads and saw mills should be limited to the minimum necessary.

(c) Requirement that the customary practices in elimination of fire hazards be observed with necessary specifications therefor.

(d) The installation commander will be consulted to obtain his desires in connection with security measures, and other matters affecting the installations, and the requirements of such measures will be set forth specifically.

(e) Any measures considered necessary to protect timber and young growth not marked for cutting will be specified.

(f) Where an appraisal is required, the appraisal report will be prepared by a competent forester. The report will indicate the number and size of each species and classification of trees to be cut; the estimated board feet in log scale measurement; linear estimates of pole timber, and amount of cord wood. The appraiser should indicate in the appraisal report what, in his opinion, should be acceptable as a minimum price for different types of timber, as well as a total or lump sum estimate for the whole. Methods of administration and sale of timber by the Army or Air Force should follow the same general rules employed by the U.S. Forest Service in its sales and forestry practices. U.S. Forest Service personnel may be available for this work, if desired, on a reimbursable basis, provided the size of the area in question and the location render such arrangements feasible.

(g) Minor sales, involving lots with an estimated value of $1,000 or less, may be accomplished by the reservoir manager on civil works projects under general guidance issued by the DE Real Estate Branch. In such minor sales, two or more informal bids, in writing, will be obtained, if possible. If only one bid can be obtained, the proposed sale will be posted for a period of ten (10) days.

### § 644.505 Disposal plan for embedded gravel, sand or stone.

Prior to offering sand, gravel, or stone for disposal, a disposal plan will be prepared, which will include the following:

(a) Control of transportation facilities which will limit use of roads and construction of new roads to the minimum necessary.

(b) Security measures established by consultation with the installation commander to properly protect Government property and other interests of the Government.

(c) Where applicable, the depth or level to which the material may be removed, and any restoration of the site after removal.

(d) Specifications as to methods to establish amount of material removed for the purpose of payment.

(e) With certain exceptions as discussed in paragraph (d) of § 644.544 an appraisal report will be prepared by a person familiar with the material involved and the operations for mining, quarrying or otherwise removing it, giving the type or grade of material involved and an opinion as to the minimum price that should be acceptable.

### § 644.506 Procedure for transfer to another Federal agency.

As soon as possible after standing timber, embedded sand, gravel, or stone are made available for disposal, other Federal agencies having activities within the vicinity of the location of the property and which, in the opinion to the responsible DE, may desire transfer of the property will, to the extent practicable or economical, be notified of the availability of the property for disposal. Such notification should include the following: information concerning how arrangements can

be made to inspect the property; information concerning conditions governing cutting, harvesting, mining, or removal of the property and a statement that the property will be advertised for sale upon the expiration of fifteen (15) calendar days from the date of the notification, unless a request for transfer of the property, or a statement that a request for transfer of the property, or a statement that a request therefor may be made, is received within the fifteen (15) day period. Should a Federal agency request within the fifteen (15) day period, that disposal of the property be withheld pending determination of a requirement, disposal will be withheld not longer than sixty (60) days from the date of notice of availability, unless DAEN-REM approves withholding disposal for a longer period. Disposal will not be withheld for such sixty (60) day period, extended if applicable, if to do so would interfere with construction or other necessary operations. Should a request be received from a Federal agency for transfer of the property, the property will be transferred in accordance with existing procedures without reimbursement except as provided by FPMR 101–47.203–7. If no request for transfer is received, the property will be considered surplus and disposed of by one of the methods outlined in §§ 644.507 and 644.508. The foregoing instructions do not apply to land clearance operations performed either by contract or force account. It applies only to those cases where it is proposed to offer property for sale.

### § 644.507 Sales.

DEs will be governed by the general procedure set forth in §§ 644.540 through 644.557 in selling standing timber, growing crops, embedded sand or gravel or stone products.

### § 644.508 Agreement with Small Business Administration (SBA) on sale of timber.

The Department of Defense has entered into an agreement with the SBA for the development of a program of assistance for small concerns operating in the timber business. This agreement is published for compliance as Figure 11–19 in ER 405–1–12. In the implementation of this agreement, the DE will cooperate with field representatives of SBA to the fullest extent compatible with efficient administration of the Army's timber disposal program.

### § 644.509 Status as small business.

(a) *Definition.* Each invitation for bids for the sale of timber with an estimated value of $2,000 or more will contain a definition of small business and provision for self-certification of the bidder's status within its terms. A definition for use in invitations for bids on Army timber is provided in the ''Certificate as to Small Business Status'' (Figure 11–20 in ER 405–1–12).

(b) *Self-certification.* 13 CFR 121.3–9(c) provides:

> In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved.

(c) *Definition for set-asides.* The definition of small business provided in Figure 11–20 in ER 405–1–12 omits portions of the definition prescribed by SBA regulations which are not presently applicable to sales of Army timber. The omitted portions relate to sales of timber reserved for or involving preferential treatment of small business § 644.512. These portions of the definition are subject to frequent revision by SBA.

### § 644.510 Information for SBA on timber sales.

Representatives of SBA will visit District offices from time to time for purposes of coordination and assistance; to furnish names and information on prospective bidders from the SBA facilities list; and to obtain information on programmed sales of Army timber. In addition to the information which may be furnished during the course of these visits, the following items of information will be furnished to appropriate SBA field offices on each sale of timber products with an estimated value of $2,000 or more:

(a) Advice on proposed or prospective timber sales of Army timber.

(b) Copies of invitation for bids.

(c) Name of successful bidder, his status as a small business, the bid price,

and an estimate of the amount of timber sold.

### § 644.511 Certificate of competency by SBA.

Section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) authorizes the SBA to certify the competency of a small business concern as to capacity and credit. In any case where timber is being sold on a credit basis, if the bid is being questioned solely on the financial ability of the bidder and the bidder is a small business concern, the DE will notify the appropriate SBA field office immediately and follow the other procedures provided by Section III of the DOD-SBA Agreement. A certificate of competency issued by SBA will be honored in such cases.

### § 644.512 DA-SBA joint set-aside determination.

Section 15 of the Small Business Act (15 U.S.C. 644), provides that where certain joint determinations are made by the SBA and a disposal agency, the award of a contract for the sale of Government property shall be made to a small business concern. Section IV, Joint Set-Aside Determination of the DOD-SBA Agreement implements Section 15 of the Small Business Act. It is not anticipated that SBA will recommend that Army timber be reserved or set aside for sale to small business concerns on an exclusive or preferential basis. In the event recommendations on set asides of Army timber are received from SBA field offices, the SBA recommendations will be forwarded promptly to HQDA (DAEN-REM) WASH DC 20314 with DE comments and recommendation.

### §§ 644.513–644.515 [Reserved]

## Clearance of Explosive Hazards and Other Contamination From Proposed Excess Land and Improvements

### § 644.516 Clearance of Air Force lands.

The Chief of Engineers has no responsibility for inspecting or clearing excess Air Force land of explosives or chemical/biological contaminants. When a target or bombing range, or other land under the control of the Department of the Air Force, which might be contaminated with explosives or other harmful or dangerous substances, becomes excess to Defense requirements, the appropriate DE will obtain a certificate as to the extent of contamination and clearance thereof from the Commander, Air Force Logistics Command (AFLC), Wright-Patterson Air Force Base, Ohio 45433. The Corps of Engineers will continue to be the agency with which the disposal agencies, purchasers, and former lessors will communicate when explosives or objects resembling explosives, are discovered on the land after dispostion has been effected. The AFLC, upon request of the DE, will neutralize or remove such objects or substances and make a report to the requesting agency or person. See § 644.535 for support required of the Corps.

### § 644.517 Clearance of Army lands.

The responsibility for performing clearance of ordnance contaminated excess Army military real property is placed upon and remains with the using command. That command, after completion of the clearance work, will furnish the DE a ''Statement of Clearance'' (Appendix E, AR 405–90) and a record of the clearance work performed. In addition to the Statement of Clearance, the following information will be furnished to the DE upon completion of the neutralization:

(a) Records of the neutralization work performed, including statement of methods employed.

(b) List of dangerous and explosive materials removed.

(c) Number and names of demolition technicians employed.

(d) Other data that may be pertinent in the defense of any suit or claim that might subsequently arise as a result of civilian occupancy.

### § 644.518 Determination of categories.

Prior to making a recommendation for excess, the state of contamination of the property must be determined by the installation commander as either of the following:

(a) *Category One.* Those lands such as ammunition plants, storage, test, impact and training areas, bombing or target ranges, which may contain explosives or unexploded ordnance. The

report will include proposed methods of neutralization and the costs thereof.

(b) *Category Two*. Those lands or buildings which are suspected of being contaminated with radiological, industrial-military chemicals, or explosives. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), Aberdeen Proving Ground, Maryland 21010, will be requested to determine if the land contains any of the above contaminants, to determine the extent of the contamination, and to decontaminate, if necessary before such property is reported for disposal.

### § 644.519 Responsibilities.

(a) *Category One*. The DE, as designee of the Chief of Engineers, will satisfy himself that the clearance work, as certified in the Statement of Clearance, has been performed and that such clearance complies with the requirements of this section. If the DE determines that the completed clearance work is not sufficient, he will request the using command to perform the necessary additional clearance. The Department of Defense Explosives Safety Board (DDESB), has responsibility for reviewing and approving, from an explosive safety veiwpoint, clearance reports for real property declared excess and offered for disposal. DDESB should be consulted for review and analysis of accomplished clearance work for Category One property when determinations of adequacy are not within the capacities of the DE. Requests, fully documented, for review and/or analysis by the Board may be forwarded to DAEN-REM for submission to the Board. Department of Defense procedures include staff study of all proposed excess reports by the Board before grant of ''Prior Approval'' for those disposals requiring reports to the Armed Services Committees (10 U.S.C. 2662). When the clearance work has been satisfactorily performed, disposal action will be continued as set forth in this subpart F. If the DE determines that further clearance work is necessary to render the land safe for use but that such further clearance work is not economically justified, he will make a report to DAEN-REM with his recommendations and pertinent supporting data. The report will include a statement of the current status of the excess action.

(b) *Category Two*. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) is responsible for the identification and containment and elimination of all toxic and hazardous materials, and related contamination on all and/or buildings where an excessing action is planned. USATHAMA will conduct the survey and assessments of all proposed excess property to establish the type and quantities of contaminants and then plan, direct and control the program to decontaminate and clean up the property. Following the completion of the decontamination clean up program, USATHAMA will prepare a clearance statement stating the property has been cleared of all toxic and hazardous materials reasonably possible to detect using present state-of-the-art methodology, and it will provide any exceptions or restriction for utilization of the property. Clearance statements which identify contaminations of ammunition and explosives will be submitted to the DDESB for review. Category Two items may include chemical munitions or agents, liquid propellants and pyrotechnics. The clearance statement will be forwarded through the Major Army Command (MACOM) to DAEN-REM.

(1) Decontamination of Category Two real property will comply with the requirements of TB 700–4 (Decontamination of Facilities and Equipment). The Bulletin provides general policies, responsibilities and procedures applicable whenever potentially contaminated facilities are disposed of to other Government agencies, qualified users in industry, or to the general public.

(2) The degrees of decontamination are designated in TB 700–4. Contaminated real and personal property excessed for disposal shall be decontaminated to XXXXX before it can be removed from the Government premises, or transferred to nonqualified Government or industry users.

### § 644.520 Contaminated industrial property.

(a) GSA may arrange to sell contaminated chemical or other industrial plants to a purchaser whose operations

will result in the same type of contamination, or who agrees to perform the necessary decontamination. Any decontamination work required will be monitored by USATHAMA who will also review the completed program for adequacy of decontamination. If these arrangements cannot be worked out, USATHAMA will decontaminate the property at the request of the Office, Chief of Engineers (OCE), or the property may be withdrawn from excess and returned to the using command for care and custody.

(b) A Statement of Clearance is required for industrial property to be declared excess in order to establish a qualitative and quantitative base line for the contaminants present. In the Statement, USATHAMA will provide an adequate description of the nature and extent of the contamination. The description furnished to the DE should include the following information:

(1) Name and location of installation.

(2) Date of final clearance.

(3) Reference to attached real estate map showing locations of contaminated, cleared and restricted areas. The map(s) will be attached to the description of contamination.

(4) Statement that the area has been cleared of toxic and hazardous materials reasonably possible to detect either by present state-of-the-art methodology or by a visual inspection.

(5) Recommendation as to whether the land or structures may be used for any purpose for which it is suited, clearly identifying any areas recommended for restricted use and listing restricted tract and building numbers.

### § 644.521 Limitations on clearance cost.

The following principles are established for determination of the financial limit of clearance operations at excess installations:

(a) *Government-owned land.* Clearance work will not be undertaken where the estimated cost thereof exceeds the value of the land after decontamination plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

(b) *Leased land.* Clearance will not be undertaken where the estimated cost, plus the cost of any other required land restoration work, exceeds the value of the land after clearance and restoration plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

### § 644.522 Clearance of military scrap.

Military scrap can contain or be contaminated with explosives, chemicals, and other hazardous materials. The primary consideration in determining whether scrap metal will be removed should be the safety of persons coming on the land in question and, secondarily, the prevention of accidents resulting from the sale and/or use of the scrap metal subsequent to the land passing from the jurisdiction of the Department. The DE will insure the removal or destruction, by using command, of all military scrap and scrap metal from lands suitable for cultivation or other subsurface operations. In the case of land unsuitable for cultivation or other subsurface operations, all military scrap will be removed or destroyed and scrap metal removed, if it is reasonably possible to do so. Cases where it is considered impracticable to remove the scrap metal, will be reported to DAEN-REM for final decision. In such instances, pertinent data and the recommendation of the DE will be furnished. Disposition of military scrap or scrap metal by dumping into inland waters or by land burial in other than an approved landfill is prohibited.

### § 644.523 Restricting future of artillery and other ranges.

Experience indicates that, on ranges where high explosive projectiles have been fired or dropped, such as artillery, bombs, mortars, rockets, grenades, and the like, it is impossible to make certain that land in impact areas is absolutely safe for unrestricted use. Such impact areas receive a high concentration of fire, and the properties of these projectiles are such that many duds are deeply buried. Depth of burial, as well as the concentration of fragments or components, will affect the dependability of mine detectors. Since there is no known definite period within which such projectiles will become inert through weathering and corrosion, such contaminated areas can be

safely released for restricted use only, even after decontamination work has been carried to its practicable limit. Such restrictions will usually be in the form of a recommendation that the land be restricted to surface use only. Restrictions will be based solely on the type and/or extent of contamination. If land is contaminated to such a degree that it is considered it cannot be rendered safe for any use, disposal action will be suspended and the facts will be reported to DAEN-REM-C with the DE recommendations.

### § 644.524 Reporting contaminated land to the General Services Administration.

Contaminated areas, except industrial properties as covered by § 644.520 will not be included in a Report of Excess to GSA until such time as the affected areas have been cleared by the using command to the satisfaction of the DE and a Statement of Clearance has been received. If an exception is granted and the Department of the Army, with the concurrence of GSA, reports contaminated nonindustrial property excess, the report of excess will include statements concerning:

(a) The extent and type of such contamination;

(b) Plans for decontamination, if any; and

(c) The extent to which the property may be excessed without future decontamination.

### § 644.525 Statement of clearance in reporting excess property to GSA.

The Report of Excess will include the Statement of Clearance furnished by the using command (§ 644.517). The record of the clearance work performed by the using command will not be included in the Report of Excess but will be preserved in the permanent records of the DE. It is anticipated in these cases that the disposal agency (GSA) will, at the time the land is offered for sale of lease, give public notice of the circumstances surrounding its past and future restricted use. Included in such notice will be the statement that the Department of the Army is willing to remove or destory any potentially dangerous materials discovered at any time in the future, subject to the availability of funds for this purpose.

### § 644.526 Reporting target ranges.

All Reports of Excess to GSA covering lands which have been used as target ranges of any kind will contain an affirmative or negative statement in regard to contamination. This will be by appropriate schedule and reference thereto in the following manner:

(a) If the statement is negative, it will declare that no explosive or other contaminating materials were used or stored on any portion of the installation.

(b) If the statement is affirmative, reference will be made to appropriate schedules of the Report of Excess containing statements of clearance on the installation, or portions thereof.

### § 644.527 Recording Statements of Clearance.

On property disposals for which the Corps of Engineers is the disposal agency, the DE will have the Statement of Clearance recorded, if possible, as part of the permanent history of the property involved, with the proper county land record office. A copy of the report of clearance work performed will be furnished DAEN-REM and DAEN-REP.

### § 644.528 Return of contaminated leased land to owners.

Where leased land has been contaminated, whether excess to military requirements or being used, it may often prove advisable and economical to acquire the fee to such properties. Prior to considering the return of contaminated leased land to owners, District Engineers will assist installation commanders in preparing an analysis as a basis for recommendation to acquire or not acquire such areas. In the case of recommended restriction of use, notice should be given the lessor as described in § 644.525.

(a) Where such a restriction reduces the value of the land, the Department will, if consistent with the terms of the lease, pay damages equal to the reduction in value as of the effective date of termination.

(b) As stated in § 644.525, the owner should be advised that the Department

is willing to remove or destory any potentially dangerous materials that may be discovered in the future, subject to the availability of funds.

### § 644.529 Supplemental agreement with owner of contaminated leased land.

In the event that it becomes necessary to pay damages to a lessor in lieu of restoration *i.e.*, decontamination, the following clause, appropriately modified to fit the circumstances, will be made a part of the supplemental agreement terminating the lease and effecting monetary settlement in lieu of restoration. Additionally, in order to protect the Government from possible claims for damages from future purchasers, the executed supplemental agreement will, in those jurisdictions permitting recordation, be recorded by the DE thus providing legal notice to subsequent purchasers of the condition of the premises.

SUGGESTED CLAUSES FOR USE IN SUPPLEMENTAL AGREEMENT

Whereas, by reason of the use made of the premises by the Government it is impossible to ascertain after completion of decontamination operations by the Government that the following described portion of land is safe for unrestricted use by the lessor (or state because of use made by Government that use of land must be restricted to grazing, etc.):

(Legal Description; utilize hachured/annotated map(s) as attachment plus legal description.)

Now, therefore, in consideration of the payment by the Government of the United States to the lessor, (Name of Lessor), of dollars ($ ), representing the estimated compensation to which the lessor is entitled by reason of the loss of the unrestricted use of the above described property, the lessor hereby releases the Government from all claims for damages to property and/or injury to persons which may arise out of the existence on the premises of unexploded ammunition or chemical/biological agents. It is mutually understood, however, that for a period of 25 years from the date hereof, the Government shall, upon request of the lessor, remove or destroy any potentially dangerous materials that may be discovered on the land, provided that adequate appropriations are available to cover the cost of such service. (If use of the land is restricted to surface use, the lessor should agree and convenant, in consideration of the payment, to use the land for such purposes only.)

### § 644.530 Conditions in conveying land suspected of contamination.

The following conditions, appropriately modified to conform to local law, will be included in deeds conveying land which is, or is suspected of being, contaminated with explosive or toxic materials and is restricted to surface use: (GSA should be requested to include these conditions in deeds that they prepare.)

Whereas, said property was a part of (Name of Installation) , a military installation used for , and portions of this property were subject to contamination by the introduction into the said installation of bombs, shells and other charges (insert reference to toxic chemical/biological agents, if applicable) either below or upon the surface thereof; and

Whereas, the grantor has caused the property to be inspected and has decontaminated the said property to the extent deemed reasonably necessary, and, to the extent deemed consistent with sound economic limitations, has cleared the property of all dangerous and explosive materials and/or chemical/biological agents, reasonably possible to detect, and has made certain recommendations pertaining to the use to which the land may be devoted, and the said recommendations are contained in a statement, a copy of which is attached hereto and made a part hereof; and

Whereas, the grantor, by attaching such statement, does not intend to make, nor shall it be construed to have made, any representations or warranties pertaining to the condition of the land; and

Whereas, the hereinafter-designated grantee has entered into a contract to purchase said property with full knowledge of, and notwithstanding the foregoing recitals which are incorporated for the purpose of disclosing the former use made of the property hereinafter described; and

Whereas, by acceptance of this instrument, the grantee admits and confesses to full knowledge with respect to the facts contained in the foregoing recitals as to possible contaminated condition of the property;

Now, therefore, by acceptance of this instrument, and as a further consideration for this conveyance, the grantee here convenants and agrees for himself, his heirs, successors, or assigns, to assume all risk for all personal injuries and property damages arising out of ownership, maintanance, use, and occupation of the foregoing property; and further covenants and agrees to indemnify and save harmless the United States of America, its servants, agents, officers, and employees, against any and all liability,

claims, causes of action, or suits, due to, arising out of, or resulting from, immediately or remotely, the possible contaminated condition, ownership, use, occupation, or presence of the grantee, or any other person, upon the property, lawfully or otherwise.

### § 644.531 Warning to public of danger in handling explosive missiles.

When any land which has been contaminated with explosive objects, or chemical/biological agents, is released for disposal to, or use by, the general public in addition to the clearance statement furnished to the disposal agency, the DE will publicize, to the fullest extent practicable, the possibility of contaminants remaining on the land and the inherent danger of handling explosives or other contaminants. Such publication should be in the form of articles in official news media, or posting of the premises whenever the later is considered most feasible. Such publicity should include instructions that, in the event of the discovery of an explosive missile, or an object resembling an explosive missile, or other contaminant, or in the event of an injury caused by an explosion or exposure to toxic agents, such discovery or injury should be reported immediately to the DE. An effort should be made to obtain the cooperation of local law enforcing agencies to insure the prompt reporting of an accident, or the discovery of an explosive missile. The majority of accidents are the result of the removal of explosive missiles by individuals for sale to scrap dealers. Scrap dealers in the vicinity of contaminated lands should be informed of the inherent dangers and asked to cooperate by refusing to buy military scrap from private parties.

### § 644.532 Reporting accidents.

Immediately upon receipt of information of an accident involving, or appearing to involve, explosive or chemical/biological elements remaining on, or carried from an excess or surplus installation, whether under the jurisdiction of the Corps of Engineers, other Government agency, or sold or returned to public or private owners, the DE will institute an investigation and prepare a report prescribed by AR 385–40 and OCE Supplement thereto. Further, upon determination that an accident has occurred, the former using command should be requested to send qualified explosive, chemical or biological specialists to the scene of the accident immediately, in order that proper corrective measures to eliminate future accidents may be instituted. HQDA (DAEN-REM) will be immediately informed, by teletype, of any accidents due to explosives on lands which have been used by the Department involving injuries to persons and/or animals, or damages to private property.

### § 644.533 Contamination discovered after return of land to owner, or sale.

When land has been previously declared clear of explosives or other dangerous material so as to be safe for all uses and disposed of, but is later found to have been contaminated to such an extent that, in his opinion, it is dangerous to the public, the DE will request the former using command to reexamine the land for the purpose of determining the extent to which the original Statement of Clearance should be revised and to determine the kind and cost of any further clearance work by the using command which would be required to place the property in the condition set forth in the original Statement of Clearance. If further clearance work is necessary and considered economically justified, the DE will request the using command to perform such work and furnish a new Statement of Clearance and record of the further clearance effected. If further clearance work is not considered economically justified, he will make a report thereof to DAEN-REM with his recommendations and pertinent supporting data. Recommendation for reacquisition of contaminated lands will be limited to those which involve full restrictions of both surface and subsurface uses. Where subsurface use of lands only is to be restricted, it is preferable to make compensation to the owners through claim procedure, when and if instituted by the owner on his own initiative.

### § 644.534 Return of public domain land.

(a) *General.* The procedures described elsewhere in §§ 644.516 through 644.539 to carry out the continuing responsibility of the Department of the Army to assist and advise the land holder and protect the public from dangerous substances on or in the land after release are equally applicable to public domain lands. Air Force policy and procedures are generally comparable.

(b) *Congressional.* A provision has been added to several laws enacted by Congress that upon request of the Secretary of the Interior at the time of final termination of the reservation effected by the Act, the Department of the Army shall make safe for nonmilitary uses the land withdrawn and reserved, or such portions thereof as may be specified by the Secretary of the Interior, by neutralizing unexploded ammunition, bombs, artillery projectiles, or other explosive objects and chemical agents. The intent of the provision is explained by a statement of the Committee on Interior and Insular Affairs, House of Representatives, in Report No. 279, 87th Congress, 1st Session: The committee concluded that it would be appropriate to amend the bill to designate the Secretary of the Interior to act on behalf of the Federal Government in delineating the areas to be made safe for nonmilitary use when the lands are no longer required for defense purposes. ''It is expected that the Secretary of the Interior will not require the Department of the Army to proceed with expensive cleanup work in areas where there would be no direct benefit. On the other hand, it is anticipated that when potential resources or use values are such as to make dedudding or decontamination advisable, the Secretary of the Interior will identify those resources and values for the Secretary of the Army. This will permit a full and complete justification in the event that a separate appropriation therefor is required.'' Report No. 279 also quoted the following policy statement by the then Bureau of the Budget:

> . . . requirement for decontamination should be related to a standard not only of practicability, but also to one of economic feasibility that takes into account the desired future use and value of the land to be decontaminated.

(c) *Army.* The congressional policy outlined above does not change the existing Army policy. Its principal effect is to make it clear that the Secretary of the Interior has an equal interest with the Secretary of the Army in the final decision on whether it is practicable or feasible to clear lands for return to the public domain, and the extent of clearance. No difficulties in reaching agreement with Interior in these matters are anticipated. Where large expenditures are involved it will usually be necessary to request a special appropriation, leaving the final decision to Congress. In any instance, if difficulty in reaching agreement with officials of the Bureau of Land Management (or the Secretary of the Interior) should occur, it will be reported promptly to DAEN-REM with complete background data for review and instructions.

### § 644.535 Support in clearance of Air Force lands.

Where Air Force range lands are proposed for disposal, the AFLC, in most cases, will make an economic study to determine the extent of clearance that is justified by the relative values of the property before and after decontamination. For this purpose, AF commands declaring range lands excess will submit a copy of the excess recommendation to the AFLC. Upon request, the DE will prepare and furnish a disposal planning report to the AF Logistics Command for assistance in making the economic study. The disposal planning report will include, but need not be limited to, the following:

(a) A map which depicts and annotates differing areas according to their estimated highest and best use.

(b) An appraisal report reflecting the fair market value of each of the differing areas based on their highest and best use, and based on the assumption that the lands are entirely free of dangerous materials or other contamination. AFLC will compare such evaluation with cost of decontamination work. While needed primarily in connection with the return of AF range lands to the public domain, economic

studies may be made and disposal planning reports requested by the AF in other areas.

**§§ 644.536–644.539 [Reserved]**

SALE PROCEDURE

**§ 644.540 Advertising.**

(a) *Definition and purposes.* GSA regulations require that disposal agencies shall widely publicize all surplus real property which becomes available for sale. Sales will be made to the highest responsible bidder after advertising. Advertising consists of the preparation of Invitation for Bids, the posting of copies thereof in public places, their distribution to interested persons or prospective bidders, and publication of notice of sale in newspapers where such publication is deemed advisable or is required by this subpart F. The purpose of advertising and obtaining competition in selling Government property is:

(1) To give all qualified persons equal opportunity to bid for the property.

(2) To secure for the Government the benefits which flow from competition.

(3) To prevent criticism that favortism has been shown by officers or employees of the Government in making sales of public property.

(b) *Notice to Department of Commerce.* A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair market value of all the property included in the advertisement is less than $5,000, shall be prepared for publication in the U.S. Department of Commerce publications, ''Commerce Business Daily.'' Guideline is contained in the Defense Acquisition Regulation (DAR) 1–1005.1, (formerly the Armed Services Procurement Regulation). Forward statement to: U.S. Department of Commerce, Commerce Business Daily, P.O. Box 5999, Chicago, Illinois 60680.

(c) *Procedure.* Whether newspaper advertising in addition to distribution and posting of Invitation for Bids is desirable will depend upon the value of the property and in some instances the anticipated interest in the property. The ever-changing market requires different methods or efforts to obtain the best price for the Government. The time allowed for submission of bids will depend upon the time available, usually 30 days. If available, a longer period may be desirable based on value and other factors. A shorter period may be necessary and, in an emergency, a period of less than 10 days may be allowed. However, the contracting officer should make a record of written findings to support such a decision. If the emergency is based on requirements of the using command that appear questionable, a report with recommendations should be forwarded to DAEN-REM by the most expeditious means.

(d) *Bidders mailing lists.* Instructions contained in procurement regulations are applicable generally for establishing, maintaining, and controlling bidders mailing lists (DAR 2–205). Generally, all proposed sales should be preceded by an advance notice, to eliminate disinterested bidders and as a measure of economy in printing and distributing voluminous Invitation for Bids. Notice to bidders will provide that their failure to respond to two successive sales offerings will result in the removal of their names from the bidders list. When time does not permit an advance notice, one copy of the Invitation may be sent to the potential bidder, which contains the following notice: ''*Attention Bidders.* If interested in bidding on any or all items, three (3) additional copies will be furnished on request.'' The advance notice will describe the property offered and ordinarily provide that Invitation for Bids will be mailed on request or may be picked up at the installation or project at the time the property is inspected.

(e) *Inspection of the property.* Upon request, interested persons should be permitted to make appropriate inspection of the property, including inventory records, plans, specifications, and engineering reports, subject to any restrictions necessary in the interest of national security and to such reasonable rules as may be prescribed by the using command or the DE.

**§ 644.541 Award of contract.**

(a) *Opening of bids.* All bids shall be opened and publicly disclosed by a duly authorized representative of the responsible DE at the time and place

stated in the Invitation and advertisements.

(b) *Award and notice to bidders.* Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered, provided that any or all bids may be rejected when it is in the public interest to do so. When an award is made, unsuccessful bidders should be notified promptly and their earnest money deposits returned.

(c) *Equal offers.* Equal offers mean two or more offers that are equal in all respects taking into consideration the best interests of the Government. When equal acceptable offers are received, award shall be made by a drawing by lot limited to the equal acceptable offers received (See also § 644.542.)

(d) *Public auction.* When authorized by GSA, sales of surplus property may be made through contract auctioneers. Consideration should be given to auction sales when there is likely to be considerable interest in the property. GSA Regional Offices have had experience with actions, maintain lists of qualified auctioneers, are in a position to give other advice and assistance, and may authorize auction sales on behalf of GSA, pursuant to FPMR 101–47.304–7. Auctioneers retained under contract shall be required to publicly advertise for bids in accordance with applicable provisions of that regulation. The prior approval of DAEN-REM will be obtained before auction sales are undertaken.

### § 644.542 Application of anti-trust laws.

The Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more (or personal property with an acquisition cost of $3,000,000 or more) or patents, processes, techniques, or inventions, regardless of cost, shall not be disposed of to any private interest 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 anti-trust laws. Prior to obligating the Government on any such disposal, Division Engineers will furnish DAEN-REM information on the probable terms and conditions of the sale. DAEN-REM will use the information as the basis for a request to the Attorney General for advice. Under the provision cited, the Attorney General is allowed up to 60 days to furnish the advice requested. The Federal Property Management Regulation, § 101–47.301.2 provides guidance on the information to be furnished. Where indentical bids in excess of the $2,500 are received, FPMR 101–47.304–8 provides for a report to the Department of Justice. Section 101–47.304–8 provides guidance for such reports to be addressed to the Attorney General, WASH, DC, 20530.

### § 644.543 Determination of acceptable offers after advertising.

(a) Generally an acceptable offer is one which:

(1) Is submitted by a responsible bidder.

(2) Conforms to the Invitation for Bids.

(3) Equals or exceeds the appraised fair market value of the property.

(4) Was independently arrived at in open competition.

(b) A formal appraisal is not required where real property components:

(1) Are to be offered on a competitive sale basis that will adequately test the market.

(2) Are at the same location and are to be sold under a single advertisement.

(3) Have a total estimated fair market value of $10,000 or less for all property to be sold.

The determination as to necessity for a formal appraisal because of the $10,000 limitation may be made by an experienced real estate employee who need not be a real estate appraiser. This determination may be in the form of a simple written statement that in the judgment of the signer the property is not considered to exceed $10,000 in value. In these cases, awards will be supported by a determination by the DE that the market was adequately tested, and the price bid reasonable. For the purpose of records and reports, the sale price will be recorded as the fair market value. If it appears the market was not adequately tested, bids

will be rejected and the property readvertised, or, if time does not permit readvertising, a sale may be consummated using the procedure provided in paragraphs (d) and (e) of this section.

(c) All land, irrespective of estimated value, and all other real property and components with an estimated value in excess of $10,000 will be appraised. Where an acceptable offer, as defined in paragraphs (a) and (b) of this section, is not received for such property as a result of public advertising, it will be readvertised unless the responsible DE determines, based upon written findings which shall be preserved as part of the permanent file, that further public advertising will serve no useful purpose.

(d) Where no acceptable bid is received as a result of the second advertising, or a determination was made that further advertising would serve no useful purpose or is not feasible, the DE may negotiate a sale at the highest price obtainable, provided:

(1) All bids are first rejected.

(2) The total of the appraised value for all property included in any single sales contract does not exceed $1,000.

(3) All past bidders, on any of the items, and any other known interested parties are afforded a fair opportunity to participate in the negotiations.

(4) The sale price is in excess of the highest bid received as a result of advertising.

(5) In his opinion the price is reasonable.

(e) Where the appraised or estimated value of all items to be included in a single sales contract exceeds $1,000, and no acceptable bid is received, the high bidder may at the discretion of the DE be given a reasonable period, not to exceed five working days, to increase his bid. At the same time all other bids shall be rejected and bid deposits returned. If the high bidder increases his offer to an amount equal to the total appraised or estimated value of the items involved, the DE may consummate the sale. All other cases will be forwarded to DAEN-REM together with an opinion as to whether the market was adequately tested and the highest price offered is reasonable, and with recommendations as to the course of action to be followed. If a negotiated sale to other than the highest bidder is recommended, information for preparation of a report to the Government Operations Committees of Congress will be included, as required in paragraph (c)(2) of § 644.544.

### § 644.544 Negotiated sales.

(a) *To private parties.* Negotiated sales to private parties are not viewed with favor. Generally, such negotiated sales will be approved only where an emergency exists that will not permit advertising, where advertising would serve no useful purpose, or where a negotiated sale is in the best interest of the Government. Emergencies which justify sales without advertising do not ordinarily justify sales without competition. Instances are rare where the emergency is such that time does not permit the oral solicitation of quotations from more than one source. In any sales which are made without benefit of advertising, competition by informal solicitation and quotation will be obtained to the maximum extent feasible under the circumstances. Such sales should be negotiated at the best terms obtainable and at not less than the appraised fair market value.

(b) *To eligible agencies.* (1) Acts of Congress listed in the Federal Property Management Regulation, § 101–47.4905 (Illustrations), authorize negotiated sales of surplus real property to states and other eligible public agencies listed therein. The Acts listed, except section 203(c)(3)(H) of the Federal Property Act (40 U.S.C. 484(c)(3)(H)), cover special classifications of property for specialized use, the most important of which is disposal of airport property. The section of the Act cited authorizes negotiated sales of surplus property to states, territories, possessions, political subdivisions thereof, or tax-supported agencies thereof, provided the appraised fair market value of the property and other satisfactory terms of disposal are obtained. (The other Acts listed in § 101–47.4905 provide for disposal subject to conditions of use but without consideration, or at reduced consideration, except power transmission lines which are sold without conditions but at the appraised fair

market value.) Notification that surplus property is available for disposal will be given to eligible public agencies for all airport property and for any other property where there is reason to believe that an eligible public agency may be interested in the property or that the property may be adaptable to the agency's use (§§ 644.400 through 644.443).

(2) Title 10, United States Code, Section 4682, authorizes the Secretary of the Army to sell obsolete or excess material at fair value to the National Council of the Boy Scouts of America. The Judge Advocate General has held that buildings and other improvements no longer required by the Department be sold to that organization at the appraised fair market value.

(c) *Authority to negotiate.* (1) The DE is authorized to dispose of land, improvements, related personal property and real property components (including standing timber and embedded sand, gravel, and stone-quarried products in their unmined or natural state) with an estimated fair market value of $1,000 or less by negotiated sale without advertising, provided that such action is within the purview of paragraphs (a) and (b) of this section, and satisfactory terms of disposal can be obtained. Except as provided in § 644.543 and paragraph (b) of § 644.544 all sales are not less than the appraised fair market value. See paragraph (d) of this section for requirement for appraisal by contract.

(2) All other proposals to negotiate sales without advertising will be submitted to DAEN-REM for advance approval. In submitting such proposals, the nature of the emergency or other situation justifying the waiver of advertising will be clearly stated. The property involved will be adequately defined, and the appraised fair market value and proposed price will be set forth. Negotiated sales of surplus property with an appraised value in excess of $1,000 under provisions of the Federal Property Act cited in paragraph (b)(1) of this section, require submission of an explanatory statement to the Government Operations Committees of Congress. Under the FPMR, a statement must be submitted at least 35 days in advance of each such negotiated disposal. When required, the DE will forward a draft of statement to HQDA (DAEN-REM) for transmittal to GSA for submission to the Committees.

(d) *Appraisal by contract.* Pursuant to Federal Property Management Regulation, § 101–47.304–9(b), where sales are to be negotiated under the authority provided by paragraphs (a) and (b) of this section, a contract appraisal should be obtained provided that the cost of such a contract would not be out of proportion to the recoverable value of the property and is in the best interest of the Government. If such is not the case, the head of the disposal agency, or his designee, may authorize any other appropriate method to obtain an estimate of fair market value. Requests for waiver will be forwarded to DAEN-REM.

(e) *Record to justify waiver of advertising.* (1) A written justification for negotiated sales made under the authority of these instructions will be prepared and filed by the DE with the record of disposal in each case. A copy of Standard Form 1036 may be used for this purpose.

(2) Except for those cases covered by paragraph (b) of this section, the nature of the emergency compelling waiver of advertising, the reason why it was considered that advertising would serve no useful purpose, or why the negotiated sale was considered to be in the best interest of the Government, will be clearly stated. In cases where an explanatory statement is transmitted to the Committees on Government Operations, a copy of that statement will be furnished the appropriate GSA Regional Office and filed with the record of the case as the required documentation of justification for waiver of advertising. DAEN-REM will make available to the DE necessary copies of such statements for filing or distribution.

### § 644.545 Form of invitation for bids and contract of sale.

Sale contract forms will be prepared by the DE conducting the sale. ENG Form 571–R, Invitation for Bids, Bid and Acceptance, Sale of Surplus Real Property will be used as a guide in sales of bare land or improved land and related personal property. ENG Form

1038–R, Invitation for Bids, Bid and Acceptance, Sale and Removal of Buildings (or other Real Estate Improvements), will be used as a guide in sales of buildings and other improvements for removal from the site. These forms are designed for use in normal sales of land and real estate improvements pursuant to existing delegations of authority. The DE is authorized to change the formats, to rearrange the sequence of paragraphs, and to add or to delete paragraphs in whole or part, as local circumstances require, but no substantive departure from the forms is authorized without prior specific approval of DAEN-REM. Whenever a sale is to be conducted pursuant to a special delegation of authority, and whenever the circumstances of a sale are such as to render use of these forms inappropriate, a form will be devised by the DE to meet the requirements of the particular sale involved, and forwarded to DAEN-REM for approval. Suggested additional provisions and conditions for use in the sale of standing timber are contained in ENG Form 2140–R, Supplement to Standard Form 114 for use in Timber Sales Contract. In preparing sale contract forms, the following instructions will be followed:

(a) A definite date and time will be set for the opening of bids.

(b) Bids will be prepared in quadruplicate, all copies to be signed by the bidder.

(c) The Invitation for Bids will require each bidder to submit with his bid a certified check, cashier's check, traveler's check, or United States postal money order drawn to the order of the ''Treasurer of the United States'' for at least 20 percent of the bid. When the cash bid may be a small part of the total consideration (where such dismantling and restoration is involved), the DE should set a definite higher amount as a bid deposit. Also, in such cases a performance bond, adequate to discourage breach of contract after only partial performance, may be required.

(d) For real property components the Invitation for Bids will require payment in full within seven days after the successful bidder is notified that his bid is accepted and, in any event, prior to removal of the property. The time specified for completion of payment for land will depend upon the sum of money involved.

(e) Bids may be submitted for one or any number of items. Items or lots of real property will be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms. Land, however, will not be subdivided solely for this purpose, and in the case of timber sales or sales of embedded sand, gravel and stone, it may not be feasible to have more than one purchaser operating in the same area. Further, it may not be to the Government's interest. Buildings will be offered for sale as single items whenever practicable but submission of bids covering specified groups as an item or all of the buildings may be permitted if the DE considers such a procedure is in the best interest of the Government. It may sometimes be advantageous to divide the buildings into appropriate groups and to permit bidding on individual buildings or on specified groups of buildings or on the entire lot. When such bids are permitted, the Invitation for Bids, ENG Form 1038–R, will be flagged to inform bidders that lump sum bids on the entire lot (and specified groupings, if this procedure is appropriate) may be made but will not be accepted unless the lump sum bid exceeds the total of the highest bids received on each item (or on the groupings).

### § 644.546 Credit.

Payment of the purchase price over an extended period of time should be considered only when the price is a considerable amount, and it may be to the Government's interest to extend credit. Prior to offering property for sale on an extended payment plan basis, approval from DAEN-REM will be obtained. Extension of credit will be within the limitations of FPMR 101–47.304–4. Credit cannot be extended, except to state or local governments, nor can any other special condition be applied, unless provision was made for it in the Invitation for Bids.

### § 644.547 Extensions of time.

Granting an extension of time, where unusual or unforeseeable circumstances are not present, is contrary to the form of the Invitation for Bids, and amounts to the application of special conditions not provided for therein. This violates GSA regulations and the principles of fair competition. Adoption of the following guides in the development and administration of sales programs will help to avoid unjustified requests for extensions of time:

(a) Establishment of realistic periods for completion of the sales contract.

(b) Necessary and justified extensions to be authorized subject to posting additional bond to insure performance and payment of adequate consideration where use of Government land is involved.

(c) Reasonable restrictions on resale of improvements at the site.

(d) Prohibition against posting advertising signs and storage of salvaged material on the installation pending sale to other customers.

### § 644.548 Abstract of bids.

At the opening of bids, DD Form 1501 or 1501–1 (Abstract of Bids) will be prepared showing all bids received, the amount for each item, and the total. The successful bid will be encircled in red or typed in red.

### § 644.549 Payments.

All payments should be in the form of cash, cashier's check, money order, traveler's check, draft, or any other form of payment not subject to stoppage or revocation. All such checks, money orders, or drafts should be drawn to the order of the ''Treasurer of the United States.''

### § 644.550 Sale to employees or military personnel.

The sale of Government real property will not be made to civilian employees or military members of the Department of Defense (including an agent, employee or member of the immediate family of such personnel) whose duties include any functional or supervisory responsibility for the disposal of real property under Army control.

### § 644.551 Equal opportunity—sales of timber, embedded sand, gravel, stone, and surplus structures.

Consistent with Executive Order 11246 as amended by Executive Order No. 11375, every Government contract involving employment shall include provisions for equal opportunity in employment, in connection with the performance of work under the contract. The equal employment opportunity clause in DAR 7–103.18 will be included in all contracts and first-tier sub-contracts over $10,000 pertaining to the following real estate actions in the United States and its possessions, unless exempted under the provisions of DAR 12–805:

(a) Sale of standing timber.

(b) Sale of embedded sand, gravel, and stone in their natural state.

(c) Sale of surplus structures where an appreciable amount of dismantling and site restoration is involved.

### § 644.552 Statement of contingent or other fees.

The instructions and procedures contained in section I, part 5, DAR, are applicable to the sale of Government-owned real property and will be followed. Where applicable the statement set forth in DAR 1–506 will be included in Invitation for Bids and Contracts of Sale and an identical signed statement will be secured from the prospective purchaser where the property is to be sold without advertising for competitive bids. In addition to the statement, Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing, or Resulting From Award of Contract) will be completed where either part of the statement is answered in the affirmative. The exceptions to the use of the statement and Standard Form 119 are set forth in DAR 1–506–3 and may apply generally to real property sales of the Army, Air Force and non-defense agencies except that the monetary limitation prescribed by DAR 1–506.3 is $1,000 insofar as sales or property of the Department of Energy are concerned.

### § 644.553 Preparation and distribution of sales documents and reports of sales.

(a) *Report of funds received.* As funds are collected from sales, reports will be prepared promptly. Sales may be allowed to accumulate to permit the making of fewer reports, but in no case will they go unreported longer than 48 hours. DD Form 1131 and supporting papers will be signed by the DE conducting the sale.

(b) *Numbering of contracts.* The numbering of contracts involving the receipt or expenditure of funds will be in accordance with ER 1180–1–1 (ECI 30–203).

(c) *Documentation and reports of sale.* The DE responsible for the sale will prepare and retain copies of documents pertaining to the sale, and will make required distribution of the following (see paragraph (d) of this section).

(1) Contract—one signed and two authenticated copies.

(2) DD Form 1501 or 1501C (Abstract of Bids)—one copy (not required for negotiated sales).

(3) DD Form 1131—four copies. All sales will be listed on DD Form 1131, extended if necessary. Separate forms are not required for each contract. When receipts from more than one contract are reported on one DD Form 1131, all related contracts will be attached to and transmitted with the form.

(4) Standard Form 1036, Statement and Certificate of Award, attached to the original signed contract and the DE's copy of each contract, or separate statement justifying negotiation (paragraph (e) of § 644.544).

(5) Advertisement, if any—two copies.

(6) Bond, if any—two signed copies.

(d) *Distribution of reports of sale*—(1) *Military property.* The finance officer will be furnished one authenticated copy of the contract and four executed copies of DD Form 1131, together with funds collected. The finance officer will retain the contract, funds, and one copy of DD Form 1131, and will receipt and return to the responsible DE three copies of DD Form 1131.

(2) *Civil works property.* The finance officer will be furnished four executed copies of DD Form 1131, together with funds collected, an authenticated copy of each contract, Standard Form 1036 or a statement justifying negotiation, copy of advertisement, if any, and original signed bond, if any. Three copies of DD Form 1131 (Cash Collection Voucher) will be receipted and returned to the DE.

### § 644.554 Insurance against loss or damages to buildings and improvements by fire or acts of God.

The Department does not carry property insurance of any nature. Vendees, however, may be advised as to their liability for certain losses and that insurance protection against such risks is optional. Under the FPMR, the vendee must provide insurance to protect the United States when credit is extended (§ 101–47.304–4(f)).

### §§ 644.555–644.557 [Reserved]

## Inspections To Insure Compliance With Disposal Conditions

### § 644.558 Properties requiring compliance inspections.

The principal properties conveyed which require inspections are for the training of civilian components of the Armed Forces. However, other properties are sometimes conveyed under special acts of Congress subject to conditions required by the authorizing act. These properties will also be inspected for compliance with such conditions.

### § 644.559 Civilian component training facilities.

(a) *Authority.* Under the provisions of the Surplus Property Act of 1944, as amended, a number of surplus real properties of the United States certified by the Governor of the state in which located and by the Secretary of the Army, Navy or Air Force as the case was, as being suitable and needed for use in training and maintaining civilian components of the Armed Forces under their respective jurisdictions, were conveyed by the Administrator of the War Assets Administration or by the General Services Administration to states, their political subdivisions or tax-supported instrumentalities for

such purposes. These conveyances contained a number of covenants, conditions, restrictions and reservations, designed to insure the use and maintenance of the property and appurtenances for the purpose for which conveyed and otherwise to protect the interest of the United States. The Secretary of Defense is authorized by (40 U.S.C. 484(k)(4)(d)) to:

(1) Determine and enforce compliance with the terms, conditions, reservations and restrictions contained in any instrument by which such transfer was made;

(2) Reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(3) Grant releases from any of the terms, conditions, reservations and restrictions contained in, and convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was transferred: Provided, that any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interest of the United States.

(b) *Authority delegated.* The authority vested in the Secretary of Defense under the Act cited in paragraph (a) of this section has been redelegated to the Secretary of the Army and the Secretary of the Air Force, respectively (Department of Defense Directive 5100.10, dated 16 March 1972).

### § 644.560 Inspections of civilian component training facilities and other properties conveyed subject to conditions.

The DE, within whose areas of military real estate operations are located the facilities conveyed under the authority mentioned in § 644.559, will make physical inspections thereof for the purpose of determining compliance with the terms of the conveyance. Any evidence of noncompliance should be reported to DAEN-REM in order that appropriate recommendations may be made to the respective Secretary for corrective action. A detailed statement of the facts and recommendations of the DE should be included in the report. Inspections should be scheduled and integrated with outlease compliance inspection itineraries in the interest of economy. This requirement for inspections extends to properties conveyed by the Secretary of the Army or Air Force under special legislation, where the deed of conveyance imposes conditions on future use of the land. These inspections need not be made annually but frequently enough so that the DE is assured that the conditions are being observed, and at least every three years. Compliance with conditions in deeds for property conveyed for airport purposes under 49 U.S.C. 1723 and 50 App. U.S.C. 1622g is the responsibility of the Secretary of Transportation; for property conveyed for purposes of health and education, the Secretary of Health, Education, and Welfare or its successor agencies (40 U.S.C. 484(k)(4)). The Commander, U.S. Army Materiel Development and Readiness Command, is responsible for compliance with the National Security Clause, and similar conditions, in deeds conveying industrial properties.

### § 644.561 Inspections of civil works properties.

Disposal of real estate interests which impose restrictions on the use of the land, or reserve an estate in the land, will be inspected for compliance on an annual or other reasonable basis to assure compliance.

## PARTS 645–649 [RESERVED]