

available corrective actions fail to produce the desired driver improvement. Revocation of the driving privilege will be for a specific period, but never less than 6 months, applies at all military installations, and remains in effect on reassignment.

(2) Driving privileges are subject to revocation when an individual fails to comply with any of the conditions requisite to the granting of the privilege. (See §634.6.) Revocation of installation driving and registration privileges is authorized for military personnel, family members, civilian employees of DOD, and other individuals with installation driving privileges. For civilian guests, revocation is authorized only with respect to incidents occurring on the installation or in the areas subject to military traffic supervision.

(3) Driving privileges will be revoked for a mandatory period of not less than 1 year in the following circumstances:

(i) The installation commander or designee has determined that the person lawfully apprehended for intoxicated driving refused to submit to or complete a test to measure the alcohol content in the blood, or detect the presence of any other drug, as required by the law of the jurisdiction, installation traffic code, or by Service directive.

(ii) A conviction, nonjudicial punishment, or a military or civilian administrative action resulted in the suspension or revocation of a driver's license for intoxicated driving. Appropriate official documentation of such conviction is required as the basis for revocation.

(4) When temporary suspensions under §634.10(a)(3) are followed by revocations, the period of revocation is computed beginning from the date the original suspension was imposed, exclusive of any period during which full driving privileges may have been restored pending resolution of charges. (Example: privileges were initially suspended on 1 January 1996 for a charge of intoxicated driving with a blood alcohol content of 0.14 percent. A hearing was held, extreme family hardship was substantiated, and privileges were restored on 1 February pending resolution of the charge. On 10 March, the driver was convicted for intoxicated

driving. The mandatory 1-year revocation period will consist of January 1996 plus March 1996 through January 1997, for a total of 12 months with no installation driving privileges.)

§634.11 Administrative due process for suspensions and revocations.

(a) Individual Services will promulgate separate regulations establishing administrative due process procedures for suspension or revocation of driving privileges. The procedures in paragraphs (b) and (c) of this section apply to actions taken by Army commanders with respect to Army military personnel and family members and to civilian personnel operating motor vehicles on Army installations. For Marine Corps users, the provisions of this paragraph apply pending publication of a Marine Corps order addressing administrative due process.

(b) For offenses other than intoxicated driving, suspension or revocation of the installation driving privilege will not become effective until the installation commander or designee notifies the affected person and offers that person an administrative hearing. Suspension or revocation will take place 10 days after this written notice is received unless an application for a hearing is made by the affected person within this period. Such application will stay the pending suspension or revocation for a period of 10 days.

(1) If, due to action by the Government, a hearing is not held within 10 days, the suspension will not take place until such time as the person is granted a hearing and is notified of the action of the installation commander or designee. However, if the affected person requests that the hearing be continued to a date beyond the 10-day period, the suspension or revocation will become effective immediately on receipt of notice that the request for continuance has been granted.

(2) If it is determined as the result of a hearing to suspend or revoke the affected person's driving privilege, the suspension or revocation will become effective when the person receives the written notification of such action. In the event that written notification cannot be verified either through a returned receipt for mail or delivery

through command channels, the hearing authority will determine the effective date on a case-by-case basis.

(3) If the revocation or suspension is imposed after such hearing, the person whose driving privilege has been suspended or revoked will have the right to appeal or request reconsideration. Such requests must be forwarded through command channels to the installation commander within 10 days from the date the individual is notified of the suspension or revocation resulting from the administrative hearing. The suspension or revocation will remain in effect pending a final ruling on the request. Requests for restricted privileges will be considered per § 634.16.

(c) For drunk driving or driving while intoxicated offenses, reliable evidence readily available will be presented promptly to an individual designated by the installation commander for review and authorization for immediate suspension of installation driving privileges.

(1) The reviewer should be any officer whose primary duties are not in the field of law enforcement.

(2) Reliable evidence includes material such as witness statements, military or civilian police report of apprehension, chemical test results if completed, refusal to consent to complete chemical testing, video tapes, statements by the apprehended individual, field sobriety or preliminary breath test results, and other pertinent evidence.

(3) Reviews normally will be accomplished within the first normal duty day following final assembly of evidence.

(4) When detailed and reliable evidence is not available, immediate suspension should not be based on published lists of arrested persons, statements by parties not witnessing the apprehension, or telephone conversations or other information not supported by documented and reliable evidence.

(5) Installation commanders may authorize the installation law enforcement officer to conduct reviews and authorize suspensions in cases where the designated reviewer is not reasonably available and, in the judgment of the installation law enforcement officer,

such immediate action is warranted. Review by the designated officer will follow as soon as practicable in such cases. When a suspension notice is based on the law enforcement officer's review, there is no requirement for confirmation notice following subsequent review by the designated officer.

(6) For active duty military personnel, written notice of suspension for intoxicated driving will be provided to the individual's chain of command for immediate presentation to the individual.

(7) For civilian personnel, written notice of suspension for intoxicated driving normally will be provided without delay via certified mail. If the person is employed on the installation, such notice will be forwarded through the military or civilian supervisor. When the notice of suspension is forwarded through the supervisor, the person whose privileges are suspended will be required to provide written acknowledgment of receipt of the suspension notice.

(8) Notices of suspension for intoxicated driving will include the following:

(i) The fact that the suspension can be made a revocation under § 634.10(b).

(ii) The right to request, in writing, a hearing before the installation commander or designee to determine if post driving privileges will be restored pending resolution of the charge; and that such request must be made within 10 days of the notice of suspension.

(iii) The right of military personnel to be represented by counsel at his or her own expense and to present evidence and witnesses at his or her own expense. Installation commanders will determine the availability of any local active duty representatives requested.

(iv) The right of Department of the Army (DA) civilian employees to have a personal representative present at the administrative hearing in accordance with applicable laws and regulations.

(v) Written acknowledgment of receipt to be signed by the individual whose privileges are to be suspended or revoked.

(9) If a hearing is requested, it must take place within 10 days of receipt of

the request. The suspension for intoxicated driving will remain in effect until a decision has been made by the installation commander or designee, but will not exceed 10 working days after the hearing while awaiting the decision. If no decision has been made by that time, full driving privileges will be restored until such time as the accused is notified of a decision to continue the suspension.

(10) Hearing on suspension actions under § 634.10(a) for intoxicated drivers pending resolution of charges will cover only the pertinent issues of whether—

(i) The law enforcement official had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs.

(ii) The person was lawfully cited or apprehended for an intoxicated driving offense.

(iii) The person was lawfully requested to submit to a test for alcohol or other drug content of blood, breath, or urine and was informed of the consequences of refusal to take or complete such test.

(iv) The person refused to submit to the test for alcohol or other drug content of blood, breath, or urine; failed to complete the test; or submitted to the test and the result was 0.10 percent or higher blood alcohol content, or showed results indicating the presence of other drugs for an on-post apprehension or in violation of State laws for an off-post apprehension.

(v) The testing methods used were valid and reliable, and the results accurately evaluated.

(11) For revocation actions under § 634.10(b)(3) for intoxicated driving, the revocation is mandatory on conviction or other findings that confirm the charge. (Pleas of nolo contendere are considered equivalent to guilty pleas.)

(i) Revocations are effective as of the date of conviction or other findings that confirm the charges.

(ii) The notice that revocation is automatic may be placed in the suspension letter. If it does not appear in the suspension letter, a separate letter must be sent and revocation is not effective until receipt of the written notice.

(iii) Revocations cancel any full or restricted driving privileges that may have been restored during suspension and the resolution of the charges. Requests for restoration of full driving privileges are not authorized.

§ 634.12 Army administrative actions against intoxicated drivers.

Army commanders will take appropriate action against intoxicated drivers. These actions will include the following:

(a) A written general officer reprimand, administrative in nature, will be issued to active duty Army officers, commissioned and warrant, and non-commissioned officers, to include soldiers in the grade of E-4 appointed on official orders to corporal, in the cases described below. This reprimand may be issued by an officer frocked to the grade of brigadier general. Subsequent filing of the reprimand will be in accordance with the provisions of AR 600-37.

(1) Conviction of intoxicated driving or driving under the influence of alcohol or other drugs either on or off the installation.

(2) Refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the blood, breath, or urine, either on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.

(3) Driving or being in physical control of a motor vehicle on post when the blood alcohol content is 0.10 percent or higher, irrespective of other charges, or off post when the blood alcohol content is in violation of State laws, irrespective of other charges.

(4) Driving or being in physical control of a motor vehicle, either on or off the installation, when lawfully requested chemical tests reflect the presence of illegal drugs.

(b) A written reprimand, administrative in nature, may be issued by a general officer or other appropriate official to active duty soldiers in the grade of E-4 (except corporals) and below in cases described in paragraph (a) of this section.

(c) Review by commanders of the service records of active duty soldiers apprehended for offenses described in

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(a) above to determine if the individual warrants warrant—

(1) Administrative reduction per AR 600-200.

(2) Bar to reenlistment per AR 601-280.

(3) Administrative discharge per AR 635-200.

§ 634.13 Remedial driver training programs.

(a) Navy activities will comply with OPNAVINST 5100.12D, Air Force activities with AFR 30-2, and Marine Corps activities with MCO 5100.19C.

(b) Installation commanders may establish a remedial driver training program to instruct and educate military personnel requiring additional training. Personnel will be chosen for the program on the basis of their individual driving records. The curriculum should provide instruction to improve driving performance and compliance with traffic laws.

(c) Installation commanders may schedule periodic courses if courses on a continuing basis are not practical. If civil authorities conduct such courses, commanders may arrange for installation personnel to attend these courses in lieu of operating a course on or by the installation.

(d) Civilian personnel employed on the installation, contractor employees, and family members of military personnel may voluntarily attend these or similar courses.

§ 634.14 Alcohol and drug abuse programs.

(a) Commanders will refer military personnel suspected of drug or alcohol abuse for evaluation in the following circumstances:

(1) Behavior is indicative of alcohol or drug abuse.

(2) Continued inability to drive a motor vehicle safely because of alcohol or drug abuse.

(b) The commander will ensure military personnel are referred to the installation alcohol and drug abuse program or other comparable facilities when they are convicted of, or receive an official administrative action for, any offense involving intoxicated driving. A first offender may be referred for treatment if more evidence of sub-

stance abuse exists than merely the offense of intoxicated driving. The provisions of this paragraph do not limit the commander's prerogatives concerning other actions that may be taken against offenders under separate Service policies. (Army, see AR 600-85; Marine Corps, see MCO P5300.12.)

(c) Active duty Army personnel apprehended for drunk driving, on or off the installation, will be referred to the local Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for evaluation within 10 days to determine if the person is dependent on alcohol or other drugs which will result in enrollment in Track I or other level of treatment in accordance with AR 600-85.

(d) Active duty Navy personnel apprehended for drunk driving, on or off the installation, will be screened by the respective CAAC facility within 10 days to determine if the individual is dependent on alcohol or other drugs. Active duty Marines apprehended for intoxicated driving, on or off the installation, will be referred for interview by a Level II substance abuse counselor within 10 days for evaluation and determination of the appropriate level of treatment required subsequent to this evaluation, the Marine will be assigned to the appropriate treatment program as prescribed by MCO P5300.12.

(e) The Services may develop preventive treatment and rehabilitative programs for civilian employees with alcohol-related problems section 4561, title 42, U.S. Code (42 U.S.C. 4561).

(f) Army supervisors of civilian employees apprehended for drunk driving will advise employees of ADAPCP services available. Army civilian employees apprehended for intoxicated driving while on duty will be referred to the ADAPCP for evaluation in accordance with AR 600-85. Army commanders will ensure that sponsors encourage family members apprehended for drunk driving to seek ADAPCP evaluation and assistance.

(g) Navy and DLA civilian personnel charged with intoxicated driving will be referred to the Civilian Employee Assistance Program for evaluation in accordance with FPM Supplement 792-2. Such referral does not exempt the

employee from appropriate administrative or disciplinary actions under civilian personnel regulations.

(h) Marine Corps civilian employees charged with intoxicated driving, on or off the installation, will be referred to the Employee Assistance Program as prescribed by MCO P5300.12. Marine dependents charged with intoxicated driving, on or off the installation, will be provided assistance as addressed in MCO P5300.12. Such referral and assistance does not exempt the individual from appropriate administrative or disciplinary action under current civilian personnel regulations or State laws.

(i) For Army, DLA, and Marine Corps, installation driving privileges of any person who refuses to submit to or fails to complete chemical testing for blood-alcohol content when apprehended for intoxicated driving, or convicted of intoxicated driving, will not be reinstated unless the person successfully completes either an alcohol education and treatment program sponsored by the installation, State, county, or municipality, or a private program evaluated as acceptable by the installation commander.

(j) For Navy, on-base driving privileges will not be reinstated for Navy personnel convicted of driving under the influence, on- or off-base, unless the person completed the full 36-hour Navy Alcohol and Drug Safety Action Program (NADSAP). The condensed NADSAP supervisor course will not be used for this purpose.

§634.15 Restoration of driving privileges on acquittal.

When an official report pertaining to drunk driving or driving while intoxicated indicates a finding of not guilty, that the charges have been dismissed or reduced to an offense not amounting to intoxicated driving, or that an equivalent determination has been made in a nonjudicial punishment proceeding or military or civilian administrative action, the suspension of driving privileges will be vacated except in cases in which:

(a) The preliminary suspension was based on refusal to take a BAC test.

(b) The preliminary suspension resulted from a BAC test (unless disposition of the charges was based on inva-

lidity of the BAC test). When a valid BAC test is involved, the suspension will continue pending completion of a hearing. In such instances, the individual will be notified in writing of the continuation of the preliminary suspension and of the opportunity to request a hearing within 10 working days. At the hearing the arrest report, the commander's report of official disposition, information presented by the individual, and such other information as the hearing officer may deem appropriate will be considered. If the hearing officer determines by a preponderance of evidence that the individual was engaged in intoxicated driving, the revocation will be for 1 year from the date of the original preliminary suspension.

(c) The person was driving or in physical control of a motor vehicle while under a preliminary suspension or revocation.

(d) An administrative determination has been made by the State or host nation licensing authority to suspend or revoke driving privileges based on local law or pertinent regulations.

(e) The individual has failed to complete a formally directed substance abuse or driver's training program.

§634.16 Restricted driving privileges or probation.

(a) For the Navy, Air Force, Marine Corps, and DLA, the installation commander may modify a suspension or revocation of driving privileges in certain cases per paragraph (d) of this section.

(b) Army requests for restricted driving privileges subsequent to suspension or revocation of installation driving privileges will be referred to the installation commander or designee for determination under criteria of (d) below, except for intoxicated driving cases, which must be referred to the General Court Martial Convening Authority. Withdrawal of restricted driving privileges is within the installation commander's discretion.

(c) Probation or restricted driving privileges will not be granted to any person whose driver's license is under suspension or revocation by a State, Federal, or host nation licensing authority.

(d) Aside from any other provisions of this regulation, the installation commander or designee may grant restricted driving privileges or probation on a case-by-case basis to accommodate any of the following reasons, provided the person's State driver's license remains valid:

- (1) Mission requirements.
- (2) Unusual personal or family hardships.
- (3) Delays exceeding 90 days, not attributed to the person concerned, in the formal disposition of an apprehension or charges that are the basis for any type of suspension or revocation.

(4) When there is no reasonably available alternate means of transportation to officially assigned duties. (In this instance, a limited exception can be granted for the sole purpose of driving directly to and from the place of duty.)

(e) The limitations on a restricted driving privilege (for example, an authorization to drive to and from place of employment or duty, selected installation facilities such as hospital and commissary, or other facilities) will be specified in writing and provided to the individual concerned. Persons found to be in violation of the restricted privilege are subject to revocation action as prescribed in § 634.10(b). For good cause, the appropriate authority may withdraw the restricted driving privilege and continue the suspension or revocation period (for example, driver at fault in a traffic accident, or driver cited for a moving traffic violation).

(f) The conditions and terms of probation will be specified in writing and provided to the individual concerned. The original suspension or revocation term in its entirety may be activated to commence from the date of the violation of probation. In addition, separate action may be initiated based on the commission of any traffic, criminal, or military offense that constitutes a probation violation.

(g) DOD employees of the Services or DLA, who can demonstrate that suspension or revocation of installation driving privileges would constructively remove them from employment, may be given a limited suspension/revocation that restricts driving on the installation or activity (or in the overseas command) to the most direct

route to and from their respective work sites (5 U.S.C. 2303 (b)(10)). This is not to be construed as limiting the commander from suspension or revocation of on-duty driving privileges or seizure of OF 346, even if this action would constructively remove a person from employment, in those instances in which the person's duty requires driving from place to place on the installation.

§ 634.17 Extensions of suspensions and revocations.

(a) Driving in violation of a suspension or revocation imposed under this regulation will result in the original period of suspension or revocation being increased by 2 years. In addition, administrative action may also be initiated based on the commission of any traffic, criminal, or military offense (for example, active duty military personnel driving on the installation in violation of an order not to do so).

(b) For each subsequent determination within a 5-year period that revocation is authorized under § 634.10(b), military personnel, DOD civilians, and NAF employees will be prohibited from obtaining or using an OF 346 for 6 months for each such incident. A determination whether DOD civilian personnel should be prohibited from obtaining or using an OF 346 will be made under FPM 930, and other laws and regulations applicable to civilian personnel. This does not preclude a commander from imposing such prohibition for a first offense, or for a longer period of time for a first or subsequent offense, or for such other reasons as may be authorized.

(c) Commanders may extend a suspension or revocation of the installation driving privileges of military personnel until completion of an approved remedial driver training course or alcohol or drug counseling program.

(d) Commanders may extend a suspension or revocation of the installation driving privileges of civilian personnel convicted of intoxicated driving on the installation until successful completion of a State or installation approved alcohol or drug rehabilitation program.

§ 634.18 Reciprocal State-military action.

The Services recognize the interests of the States in matters of POV administration and driver licensing. The following procedures will apply:

(a) Statutory authority may exist within some host nations or States for reciprocal suspension and revocation of driving privileges. If so, the installation commander or designee will honor the reciprocal agreements with State or host nation driver licensing authorities. On receipt of written notice, the receiving party may suspend or revoke driving privileges as if the violations or incidents had occurred within its own jurisdiction.

(b) If statutory authority does not exist within the State for formal military reciprocity, the procedures below will be used.

(1) Where military reciprocity has not been established by State law, commanders will act on reports of suspensions or revocations received from state authorities where the installation is located. When any State authority suspends or revokes a person's driver's license, the installation's driving privilege will be automatically terminated. Administrative actions (suspension, revocation, or point assessment) for moving traffic violations off the installation reported by State authorities should not be less than that required for similar offenses on the installation. When notified by a State of a suspension or revocation, the installation commander may suspend or revoke the person's OF 346.

(2) In CONUS, the appropriate State licensing authority will be notified when a person's installation driving privileges are revoked for a period of 1 year or more following final adjudication of an intoxicated driving offense or for refusal to submit to a BAC test. The notification will be sent to the licensing authority of the State where the individual is licensed. (See appendix B to part 634.) The notification will include the basis for the revocation and the blood alcohol concentration level.

(c) Overseas installation commanders may be affected by provisions of the applicable status of forces agreement (SOFA) and the law of the host nation concerning reciprocal suspension and

revocation. To the extent an agreement concerning reciprocity may be permitted at a particular overseas installation, the installation commander must have prior authorization to negotiate and conclude such an international agreement in accordance with applicable directives, DODD 5530.3, June 1987 and individual Service instructions.

Subpart C—Motor Vehicle Registration

§ 634.19 Registration policy.

(a) Motor vehicles will be registered according to guidance in this regulation and in policies of each Service and DLA. Unless otherwise specified by this regulation or other competent authority, a person who lives or works on a military installation or often uses the facilities will be required to register his or her vehicle. The person need not own the vehicle to register it, but must have a lease agreement, power of attorney, or notarized statement from the owner of the vehicle specifying the inclusive dates for which permission to use the vehicle has been granted.

(b) Vehicles intended for construction and material handling or used solely off the road are not usually registered as motor vehicles. Installation commanders may require registration of off-road vehicles and bicycles under a separate local system.

(c) Commanders can grant limited temporary registration for up to 45 days, pending permanent registration, or in other circumstances for longer terms.

(d) Except for reasons of security, all installations and activities of the Services and DLA within the United States and its territories will honor the DD Form 2220 (Department of Defense Registered Vehicle) issued by other installations or activities.

(e) Visitor identification may be developed and issued locally. (Air Force, see AFR 125-15.)

(f) Registration of POVs is not required at Army installations; however, the conditions in § 634.20 must be met to gain the privilege of operating a POV on an Army installation.

(1) For those installations not registering vehicles, failure to comply

with conditions in § 634.20 will be detected through traffic enforcement actions. Failure of an owner to comply with these conditions may result in administrative suspension or revocation of his or her installation driving privileges (§ 634.10).

(2) Installation commanders are authorized to use the Vehicle Registration System (VRS) of the Military Police Management Information System (MPMIS). VRS is a Standard Army Management Information System (STAMIS). For installations using VRS, the maximum number of monthly computer runs will not exceed 15 in peacetime and 4 in wartime.

(3) When fielded, VRS-2, a redesigned system, will be employed by all installations using an automated vehicle registration program.

§ 634.20 Registration requirements.

Systems for registration of POVs on military installations within the United States or its territories and in overseas areas will include the requirements specified below (Registration in overseas commands may be modified in accordance with international agreements or military necessity.)

(a) Possession of a valid State, overseas command, host nation, or international driver's license (as applicable), supported by DD Form 2 (U.S. Armed Forces Retired Identification Card), or other appropriate identification for DOD civilians.

(b) Possession of a certificate of State registration as required by the state in which the vehicle is registered.

(c) Continuing compliance with the minimum requirements of the automobile insurance laws or regulations of the State or host nation. In overseas commands where host nation laws do not require minimum personal injury and property damage liability insurance, the major overseas commander may set reasonable liability insurance requirements for registration and operation of POVs within the confines of military installations and areas. Prior to implementation, insurance requirements in host nations should be formally coordinated with the appropriate host nation agency.

(d) Satisfactory completion of safety and mechanical vehicle inspection by

State or jurisdiction in which the vehicle is licensed or located. If neither State nor local jurisdiction requires a periodic safety inspection, installation commanders may require and conduct an annual POV safety inspection; however, inspection facilities must be reasonably accessible to those requiring use. Inspections will meet minimum standards established by the National Highway Traffic Safety Administration (NHTSA) in §§ 570.1 through 570.10, part 570, chapter V, title 49, Code of Federal Regulations (CFR). Lights, turn signals, brake lights, horn, and wipers should be included in the inspection.

(e) Vehicles with elevated rear ends are unsafe and will be denied registration on Army, DLA, and Marine Corps installations. The CFR (§ 570.8 (Suspension Systems), part 570, chapter V, title 49) states that springs should not be extended above the vehicle manufacturer's design height.

§ 634.21 Specifications for DD Form 2220.

(a) *Use.* DD Form 2220 will be used to register POVs on Army, Navy, Air Force, Marine Corps, and DLA installations or facilities. The form is produced in single copy for placement on the front of the vehicle only.

(1) Each Service and DLA will procure its own forms and installation and expiration tabs. For the Army, the basic decal may be ordered through publications channels. Army installations must procure their own installation and expiration tabs using installation funds.

(2) DD Form 2220 and installation and expiration tabs will be removed from POVs when the registration expires or is terminated.

(3) The normal expiration term for registration on Army installations will be 4 years.

(b) *Specifications.* (1) DD Form 2220 will consist of international blue borders and printing on a white background. Printer information will include the following:

(i) Form title (Department of Defense Registered Vehicle).

(ii) Alphanumeric individual form identification number.

(iii) DOD seal.

(2) Name of the installation will be specified on a separate tab abutting the decal. Each Service or DLA may choose optional color codes of the registrant. Army installations having vehicle registration programs will use the following standard color scheme for the installation tab:

- (i) Blue-officers.
- (ii) Red-enlisted.
- (iii) Green-DA civilian employees (including NAF employees).
- (iv) Black-Contractor personnel and other civilians employed on the installation.

(3) An expiration tab identifying the month and year (“6-97”) or simply the year (“97”) will be abutted to the decal. For identification purposes, the date of expiration will be shown in bold block numbers on a lighter contrasting background such as traffic yellow, lime, or orange.

(4) The decal, installation tab, and expiration tab will be theft resistant when applied to glass, metal, painted, or rubberized surfaces after full adhesion had developed and will be manufactured to “tear” or “self destruct” when any attempt to remove it is made with a sharp instrument or chemical.

(5) On Army installations, a single decal with tabs will be prominently affixed to the front windshield or bumper of registered vehicles. Local policy will specify the exact placement. Some States prohibit or restrict placement of decals on windshields. In such cases, State law will be complied with.

§ 634.22 Termination or denial of registration.

Installation commanders or their designated representatives will terminate POV registration or deny initial registration under the following conditions (decal and tabs will be removed from the vehicle when registration is terminated):

- (a) The owner fails to comply with the registration requirements. (See § 634.20)
- (b) The owner sells or disposes of the POV, is released from active duty, is separated from the Service, is transferred to a new duty station, or terminates civilian employment with a military Service or DOD agency.

(c) The owner is other than an active duty military or civilian employee and discontinues regular operation of the POV on the installation.

(d) The owner’s State, overseas command, or host nation driver’s license has been suspended or revoked, or the installation driving privilege has been revoked. Where vehicle registration is terminated in conjunction with the revocation of installation driving privileges, the affected person must apply to re-register the POV after the revocation expires. Registration should not be terminated if other family members having installation driving privileges require use of the vehicle.

§ 634.23 Specified consent to impoundment.

Personnel registering POVs on Service or DLA installations must consent to the impoundment policy. POV registration forms will contain or have appended to them a certificate with the following statement:

I am aware that (insert number and title of separate Service or DLA directive) and the installation traffic code provide for the removal and temporary impoundment of privately owned motor vehicles that are either parked illegally for unreasonable periods, interfering with military operations, creating a safety hazard, disabled by incident, left unattended in a restricted or controlled area, or abandoned. I agree to reimburse the United States for the cost of towing and storage should my motor vehicle(s), because of such circumstances, be removed and impounded.

Subpart D—Traffic Supervision

SECTION I—TRAFFIC PLANNING AND CODES

§ 634.24 Traffic planning.

(a) Safe and efficient movement of traffic on an installation requires traffic supervision. A traffic supervision program includes traffic circulation planning, supervision, and control of motor vehicle traffic; publication and enforcement of traffic laws and regulations; and investigation of motor vehicle accidents.

(b) Installation commanders will develop traffic circulation plans that provide for the safest and most efficient use of primary and secondary roads. Circulation planning should be a major

part of all long-range master planning at installations. The traffic circulation plan is developed by the installation law enforcement officer, engineer, safety officer, and other concerned staff agencies. Highway engineering representatives from adjacent civil communities must be consulted to ensure the installation plan is compatible with the current and future circulation plan of the community. The plan should include the following:

(1) Normal and peak load routing based on traffic control studies.

(2) Effective control of traffic using planned direction, including measures for special events and adverse road or weather conditions.

(3) Point control at congested locations by law enforcement personnel or designated traffic directors or wardens, including trained school-crossing guards.

(4) Use of traffic control signs and devices.

(5) Efficient use of available parking facilities.

(6) Efficient use of mass transportation.

(c) Traffic control studies will provide factual data on existing roads, traffic density and flow patterns, and points of congestion. The installation law enforcement officer and traffic engineer usually conduct coordinated traffic control studies to obtain the data. Accurate data will help determine major and minor routes, location of traffic control devices, and conditions requiring engineering or enforcement services.

(d) The Military Traffic Management Command Transportation Engineering Agency (MTMCTEA) will help installation commanders solve complex highway traffic engineering problems. MTMCTEA traffic engineering services include—

(1) Traffic studies of limited areas and situations.

(2) Complete studies of traffic operations of entire installations. (This can include long-range planning for future development of installation roads, public highways, and related facilities.)

(3) Assistance in complying with established traffic engineering standards.

(e) Installation commanders should submit requests for traffic engineering

services in accordance with AR 55-80/OPNAVINST 11210.1B/AFR 75-88/MCO 11210.2C/DLAR 4500.19.

§ 634.25 Installation traffic codes.

(a) Installation or activity commanders will establish a traffic code for operation of motor vehicles on the installation. Commanders in overseas areas will establish a traffic code, under provisions of this regulation, to the extent military authority is empowered to regulate traffic on the installation under the applicable SOFA. Traffic codes will contain the rules of the road (parking violations, towing instructions, safety equipment, and other key provisions). These codes will, where possible, conform to the code of the State or host nation in which the installation is located. In addition, the development and publication of installation traffic codes will be based on the following:

(1) Highway Safety Program Standards (23 CFR part 1230).

(2) Applicable portions of the Uniform Vehicle Code and Model Traffic Ordinance published by the National Committee on Uniform Traffic Laws and Ordinances (23 CFR part 1204).

(b) The installation traffic code will contain policy and procedures for the towing, searching, impounding, and inventorying of POVs. These provisions should be well publicized and contain the following:

(1) Specific violations and conditions under which the POV will be impounded and towed.

(2) Procedures to immediately notify the vehicle owner.

(3) Procedures for towing and storing impounded vehicles.

(4) Actions to dispose of the vehicle after lawful impoundment.

(c) Installation traffic codes will also contain the provisions discussed below. (Army users, see AR 385-55.)

(1) Motorcycles and mopeds. For motorcycles and other self-propelled, open, two-wheel, three-wheel, and four-wheel vehicles powered by a motorcycle-type engine, the following traffic rules apply:

(i) Headlights will be on at all times when in operation.

(ii) A rear view mirror will be attached to each side of the handle bars.

(iii) Approved protective helmets, eye protection, and highly reflective clothing or vests will be worn by operators and passengers when in operation.

(2) Restraint systems.

(i) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installation.

(ii) Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a POV on the installation.

(iii) Restraint systems will be worn by all military service members and Reserve Component members on active Federal service driving or riding in a POV whether on or off the installation.

(iv) Infant/child restraint devices (car seats) will be required in POVs for children 4 years old or under and not exceeding 45 pounds in weight.

(iv) Restraint systems are required only in cars manufactured after model year 1966.

(3) Headphones and earphones. The wearing of headphones or earphones is prohibited while driving a U.S. Government vehicle, POV, motorcycle, or other self-propelled two-wheel, three-wheel, and four-wheel vehicles powered by a motorcycle-type engine. This does not negate the requirement for wearing hearing protection when conditions or good judgment dictate use of such protection.

(d) Only administrative actions (reprimand, assessment of points, loss of on-post driving privileges, or other actions) will be initiated against service members for off-post violations of the installation traffic code.

(e) In States where traffic law violations are State criminal offenses, such laws are made applicable under the provisions of 18 U.S.C. 13 to military installations having concurrent or exclusive Federal jurisdiction.

(f) In those States where violations of traffic law are not considered criminal offenses and cannot be assimilated under 18 USC, DODD 5525.4, in appendix C to part 634 expressly adopts the vehicular and pedestrian traffic laws of such States and makes these laws applicable to military installations having concurrent or exclusive Federal jurisdiction. It also delegates authority to installation commanders to estab-

lish additional vehicular and pedestrian traffic rules and regulations for their installations. Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that directive are subject to a fine of not more than \$50.00 or imprisonment for not more than 30 days, or both, for each violation (40 U.S.C. 318c). In those States where traffic laws cannot be assimilated, an extract copy of this paragraph and a copy of DODD 5525.4 in Appendix C, will be posted in a prominent place accessible to persons assigned, living, or working on the installation.

(g) In those States where violations of traffic laws cannot be assimilated because the Federal Government's jurisdictional authority on the installation or parts of the installation is only proprietary, neither 18 U.S.C. 13 nor the delegation in appendix C to part 634 will permit enforcement of the State's traffic laws in Federal courts. Law enforcement authorities on those military installations must rely on either administrative sanctions related to the installation driving privilege or enforcement of traffic laws by State law enforcement authorities.

SECTION II—TRAFFIC LAW ENFORCEMENT

§ 634.26 Traffic law enforcement principles.

(a) Traffic law enforcement should motivate drivers to operate vehicles safely within traffic laws and regulations and maintain an effective and efficient flow of traffic. Effective enforcement should emphasize voluntary compliance by drivers and can be achieved by the following actions:

(1) Publishing a realistic traffic code well known by all personnel.

(2) Adopting standard signs, markings, and signals in accordance with NHSPS and the Manual on Uniform Traffic Control Devices for Streets and Highways.

(3) Ensuring enforcement personnel establish courteous, personal contact with drivers and act promptly when driving behavior is improper or a defective vehicle is observed in operation.

(4) Maintaining an aggressive program to detect and apprehend persons

who drive while privileges are suspended or revoked.

(5) Using sound discretion and judgment in deciding when to apprehend, issue citations, or warn the offender.

(b) Selective enforcement will be used when practical. Selective enforcement deters traffic violations and reduces accidents by the presence or suggested presence of law enforcement personnel at places where violations, congestion, or accidents frequently occur. Selective enforcement applies proper enforcement measures to traffic congestion and focuses on selected time periods, conditions, and violations that cause accidents. The military services use selective enforcement because that practice is the most effective use of resources.

(c) Enforcement activities against intoxicated driving will include—

(1) Detecting, apprehending, and testing persons suspected of driving under the influence of alcohol or drugs.

(2) Training law enforcement personnel in special enforcement techniques.

(3) Enforcing blood-alcohol concentration standards. (See §634.34.)

(4) Denying installation driving privileges to persons whose use of alcohol or other drugs prevents safe operation of a motor vehicle.

(d) Installation officials will formally evaluate traffic enforcement at least once a year. That evaluation will examine procedures to determine if the following elements of the program are effective in reducing traffic accidents and deaths:

(1) Selective enforcement measures.

(2) Suspension and revocation actions.

(3) Chemical breath-testing programs.

§634.27 Speed-measuring devices.

Speed-measuring devices will be used in traffic control studies and enforcement programs. Signs may be posted to indicate speed-measuring devices are being used.

(a) *Equipment purchases.* Installations located in States having a formal training and certification program will purchase the same brand and model of equipment used by the State and will ensure operators attend an appropriate training program. Otherwise, equip-

ment in appropriate Service or DLA tables of allowances will be used.

(b) *Training and certification standards.* (1) The commander of each installation using traffic radar will ensure that personnel selected as operators of such devices meet training and certification requirements prescribed by the States in which the installation is located. Specific information on course dates, costs, and prerequisites for attending may be obtained by contacting the State agency responsible for police traffic radar training.

(2) Installation commanders located in States or overseas areas where no formal training program exists, or where the military personnel are unable or ineligible to participate in police traffic radar training programs, may implement their own training program or use a selected civilian institution or manufacturer's course.

(3) The objective of the civilian or manufacturer-sponsored course is to improve the effectiveness of speed enforcement through the proper and efficient use of speed-measurement radar. On successful completion, the course graduate must be able to—

(i) Describe the association between excessive speed and accidents, deaths, and injuries, and describe the traffic safety benefits of effective speed control.

(ii) Describe the basic principles of radar speed measurement.

(iii) Identify and describe the Service's policy and procedures affecting radar speed measurement and speed enforcement.

(iv) Identify the specific radar instrument used and describe the instrument's major components and functions.

(v) Demonstrate basic skills in calibrating and operating the specific radar instrument(s).

(vi) Demonstrate basic skills in preparing and presenting records and courtroom testimony relating to radar speed measurement and enforcement.

(c) *Recertification.* Recertification of operators will occur every 3 years.

§634.28 Traffic accident investigation.

Installation law enforcement personnel must make detailed investigations of accidents described below:

(a) Accidents involving Government vehicles or Government property on the installation involving a fatality, personal injury, or estimated property damage in the amount established by separate Service/DLA policy. (Minimum damage limits are: Army and Air Force, \$1,000; Navy and Marine Corps, \$500.) The installation motor pool will provide current estimates of the cost of repairs. Investigations of off-installation accidents involving Government vehicles will be made in cooperation with the civilian law enforcement agency.

(b) POV accidents on the installation involving a fatality, personal injury, or estimated property damage to a POV in excess of \$1,000 or the amount established by Service/DLA policy.

§ 634.29 Traffic accident investigation reports.

(a) *Accidents requiring immediate reports.* The driver or owner of any vehicle involved in an accident, as described in § 634.28, on the installation, must immediately notify the installation law enforcement office. The operator of any Government vehicle involved in a similar accident off the installation must immediately notify the local civilian law enforcement agency having jurisdiction, as well as law enforcement personnel of the nearest military installation.

(b) *Investigation records.* Installation law enforcement officials will record traffic accident investigations on Service/DLA forms. Information will be released according to Service/DLA policy, the Privacy Act, and the Freedom of Information Act.

(c) *Army law enforcement officers.* These officers provide the local Safety Office copies of traffic accident investigation reports pertaining to accidents investigated by military police that resulted in a fatality, personal injury, or estimated damage to Government vehicles or property in excess of \$1,000.

(d) *POV accidents not addressed in § 638.28.* Guidance for reporting these cases is provided below:

(1) Drivers or owners of POVs will be required to submit a written report to the installation law enforcement office

within 72 hours of an accident in the following cases:

(i) The accident occurs on the installation.

(ii) The accident involves no personal injury.

(iii) The accident involves only minor damage to the POV and the vehicle can be safely and normally driven from the scene.

(2) Information in the written report cannot be used in criminal proceedings against the person submitting it. Within the United States, the installation law enforcement official may require such reporting on Service forms or forms of the State jurisdiction.

(3) Reports required in paragraph (d)(1) of this section will include the following about the accident:

(i) Location, date, and time.

(ii) Identification of all drivers, pedestrians, and passengers involved.

(iii) Identification of vehicles involved.

(iv) Speed and direction of travel of each vehicle involved, including a sketch of the collision and roadway with street names and north arrow.

(v) Property damage involved.

(vi) Environmental conditions at the time of the incident (weather, visibility, road surface condition, and other factors).

(vii) Narrative description of the events and circumstances concerning the accident.

§ 634.30 Traffic accident investigation report data.

(a) Data derived from traffic accident investigation reports and from vehicle owner accident reports will be analyzed to determine probable causes of accidents. When frequent accidents occur at a location, the conditions at the location and the types of accidents (collision diagram) will be examined.

(b) Law enforcement personnel and others who prepare traffic accident investigation reports will indicate whether or not seat restraint devices were being used at the time of the accident.

(c) When accidents warrant, an installation commander may establish a traffic accident review board. The board will consist of law enforcement, engineer, safety, medical, and legal

personnel. The board will determine principal factors leading to the accident and recommend measures to reduce the number and severity of accidents on and off the installation. (The Air Force will use Traffic Safety Coordinating Groups. The Navy will use Traffic Safety Councils per OPNAVINST 5100.12D.)

(d) Data will be shared with the installation legal, engineer, safety, and transportation officers. The data will be used to inform and educate drivers and to conduct traffic engineering studies.

(e) Army traffic accident investigation reports will be provided to Army Centralized Accident Investigation of Ground Accidents (CAIG) boards on request. The CAIG boards are under the control of the Commander, U.S. Army Safety Center, Fort Rucker, Alabama 36362-5363. These boards investigate Class A, on-duty, non-POV accidents and other selected accidents Army-wide. (See AR 385-40.) Local commanders provide additional board members as required to complete a timely and accurate investigation. Normally, additional board members are senior equipment operators, maintenance officer, and medical officers. However, specific qualifications of the additional board members may be dictated by the nature of the accident.

(f) The CAIG program is not intended to interfere with, impede, or delay law enforcement agencies in the execution of regulatory responsibilities that apply to the investigation of accidents for a determination of criminal intent or criminal acts. Criminal investigations have priority.

(g) Army law enforcement agencies will maintain close liaison and cooperation with CAIG boards. Such cooperation, particularly with respect to interviews of victims and witnesses and in collection and preservation of physical evidence, should support both the CAIG and law enforcement collateral investigations.

§ 634.31 Parking.

(a) The most efficient use of existing on- and off-street parking space would be stressed on a nonreserved (first-come, first-served) basis.

(b) Reserved parking facilities should be designated as parking by permit or numerically by category of eligible parkers. Designation of parking spaces by name, grade, rank, or title should be avoided.

(c) Illegal parking contributes to congestion and slows traffic flow on an installation. Strong enforcement of parking restrictions results in better use of available parking facilities and eliminates conditions causing traffic accidents.

(d) The "Denver boot" device is authorized for use as a technique to assist in the enforcement of parking violations where immobilization of the POV is necessary for safety. Under no circumstances should the device be used to punish or "teach a lesson" to violators. Booting should not be used if other reasonably effective but less restrictive means of enforcement (such as warnings, ticketing, reprimands, revocations, or suspensions of on-post driving privileges) are available. Procedures for booting must be developed as listed below.

(1) Local standing operating procedures (SOPs) must be developed to control the discretion of enforcers and limit booting to specific offenses. SOPs should focus on specific reasons for booting, such as immobilization of unsafe, uninspected, or unregistered vehicles or compelling the presence of repeat offenders. All parking violations must be clearly outlined in the installation traffic code.

(2) Drivers should be placed on notice that particular violations or multiple violations may result in booting. Also, drivers must be provided with a prompt hearing and an opportunity to obtain the release of their property.

(3) To limit liability, drivers must be warned when a boot is attached to their vehicle and instructed how to have the boot removed without damaging the vehicle.

§ 634.32 Traffic violation reports.

(a) Most traffic violations occurring on DOD installations (within the UNITED STATES or its territories) should be referred to the proper U.S. Magistrate. (Army, see AR 190-29; DLA, see DLAR 5720.4; and Air Force, see

AFR 110-15.) However, violations are not referred when—

(1) The operator is driving a Government vehicle at the time of the violation.

(2) A Federal Magistrate is either not available or lacks jurisdiction to hear the matter because the violation occurred in an area where the Federal Government has only proprietary legislative jurisdiction.

(3) Mission requirements make referral of offenders impractical.

(4) A U.S. Magistrate is available but the accused refuses to consent to the jurisdiction of the court and the U.S. Attorney refuses to process the case before a U.S. District Court.

(b) Installation commanders will establish administrative procedures for processing traffic violations.

(1) All traffic violators on military installations will be issued either a DD Form 1408 (Armed Forces Traffic Ticket) or a DD Form 1805 (United States District Court Violation Notice), as appropriate. Unless specified otherwise by separate Service/DLA policy, only on-duty law enforcement personnel (including game wardens) designated by the installation law enforcement officer may issue these forms.

(2) A copy of all violation reports on military personnel and DOD civilian employees apprehended for intoxicated driving will be forwarded to the installation alcohol and drug abuse facility.

(c) Installation commanders will establish procedures used for disposing of traffic violation cases through administrative or judicial action consistent with the Uniform Code of Military Justice (UCMJ) and Federal law.

(d) DD Form 1805 will be used to refer violations of State traffic laws made applicable to the installation (Assimilative Crimes Act (18 U.S.C. 13) and app C and other violations of Federal law) to the U.S. Magistrate. (Army users, see AR 190-29.)

(1) A copy of DD Form 1805 and any traffic violation reports on military personnel and DOD civilian employees will be forwarded to the commander or supervisor of the violator.

(2) Detailed instructions for properly completing DD Form 1805 and contained in separate Service policy directives.

(3) The assimilation of State traffic laws as Federal offenses should be identified by a specific State code reference in the CODE SECTION block of the DD Form 1805 (or in a complaint filed with the U.S. Magistrate).

(4) The Statement of Probable Cause on the DD Form 1805 will be used according to local staff judge advocate and U.S. Magistrate court policy. The Statement of Probable Cause is required by the Federal misdemeanor rules to support the issuance of a summons or arrest warrant.

(5) For cases referred to U.S. Magistrates, normal distribution of DD Form 1805 will be as follows:

(i) The installation law enforcement official will forward copy 1 (white) and copy 2 (yellow) to the U.S. District Court (Central Violation Bureau).

(ii) The installation law enforcement office will file copy 3 (pink).

(iii) Law enforcement personnel will provide copy 4 (envelope) to the violator.

(e) When DD Form 1408 is used, one copy (including written warnings) will be forwarded through command channels to the service members's commander, to the commander of the military family member's sponsor, or to the civilian's supervisor or employer as the installation commander may establish.

(1) Previous traffic violations committed by the offender and points assessed may be shown.

(2) For violations that require a report of action taken, the DD Form 1408 will be returned to the office of record through the reviewing authority as the installation commander may establish.

(3) When the report is received by the office of record, that office will enter the action on the violator's driving record.

SECTION III—STANDARDS AND PROCEDURES FOR PROCESSING DRUNK DRIVERS

§634.33 Training of law enforcement personnel.

(a) As a minimum, installation law enforcement personnel will be trained to do the following:

(1) Recognize signs of alcohol and other drug impairment in persons operating motor vehicles.

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(2) Prepare DD Form 1920 (Alcohol Influence Report).

(3) Perform the three field tests of the improved sobriety testing techniques (§ 634.36(b).)

(4) Determine when a person appears intoxicated but is actually physically or mentally ill and requires prompt medical attention.

(5) Understand the operation of breath-testing devices.

(b) Each installation using breath-testing devices will ensure that operators of these devices—

(1) Are chosen for integrity, maturity, and sound judgment.

(2) Meet certification requirements of the State where the installation is located.

(c) Breath-testing devices must be listed on the approved NHTSA conforming products list published in the FEDERAL REGISTER. All tests must be administered by trained personnel as specified in § 634.36 and must adhere to the procedures described in §§ 634.37 and 634.38 relating to voluntary and involuntary testing.

(d) Installations located in States or overseas areas having a formal breath-testing and certification program should ensure operators attend that training.

(e) Installations located in States or overseas areas with no formal training program will train personnel at courses offered by selected civilian institutions or manufacturers of the equipment.

(f) Operators must maintain proficiency through refresher training every 18 months or as required by the State.

§ 634.34 Blood alcohol concentration standards.

(a) Administrative revocation of driving privileges and other enforcement measures will be applied uniformly to offenders driving under the influence of alcohol or drugs. When a person is tested per § 634.8, the results of the test will be evaluated as follows:

(1) If the percentage of alcohol in the person's blood is less than 0.05 percent, presume the person is not under the influence of alcohol.

(2) If the percentage is 0.05 but less than 0.10, presume the person is impaired. This standard may be consid-

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ered with other competent evidence in determining whether the person was under the influence of alcohol.

(3) If the percentage is 0.10 or more, or if tests reflect the presence of illegal drugs, the person was driving while intoxicated.

(b) Percentages in paragraph (a) of this section, are percent of weight by volume of alcohol in the blood based on grams of alcohol per 100 milliliters of blood.

(c) The standards in paragraph (a) of this section, may be modified locally to agree with those established by the State or host nation.

(d) These presumptions will be considered with other evidence in determining intoxication.

§ 634.35 Chemical testing policies and procedures.

(a) Validity of chemical testing. Results of chemical testing are valid under this regulation only under the following circumstances:

(1) Blood, urine, or other bodily substances are tested using generally accepted scientific and medical methods and standards.

(2) Breath tests are administered by qualified personnel (§ 634.33(c)).

(3) A non-portable breath-testing device approved by the State or host nation is used. For Army and Marine Corps, the device must also be listed on the NHTSA conforming products list published in the FEDERAL REGISTER. (See § 634.33.)

(4) Procedures established by the State or host nation or as prescribed in paragraph (b) of this section are followed.

(b) Breath-testing device operational procedures. If the State or host nation has not established procedures for use of breath-testing devices, the following procedures will apply:

(1) Portable breath-testing devices will be used—

(i) During the initial traffic stop as a field sobriety testing technique, along with other field sobriety testing techniques, to determine if further testing is needed on a non-portable evidentiary breath-testing device.

(ii) According to manufacturer operating instructions. (For Army and Marine Corps, the portable breath-testing

device must also be listed on the NHTSA conforming products list published in the FEDERAL REGISTER.)

(2) Non-portable evidentiary breath-testing devices will be used as follows:

(i) Observe the person to be tested for at least 15 minutes before collecting the breath specimen. During this time, the person must not drink alcoholic beverages or other fluids, eat, smoke, chew tobacco, or ingest any substance.

(ii) Verify calibration and proper operation of the instrument by using a control sample immediately before the test.

(iii) Comply with operational procedures in the manufacturer's current instruction manual.

(iv) Perform preventive maintenance as required by the instruction manual.

(c) Chemical tests of personnel involved in fatal accidents.

(1) Installation medical authorities will immediately notify the installation law enforcement officer of—

(i) The death of any person involved in a motor vehicle accident.

(ii) The circumstances surrounding such an accident, based on information available at the time of admission or receipt of the body of the victim.

(2) Medical authorities will examine the bodies of those persons killed in a motor vehicle accident to include drivers, passengers, and pedestrians subject to military jurisdiction, and other pedestrians (16 years or older with sponsor's consent only). Tests for the presence and concentration of alcohol or other drugs in the person's blood, bodily fluids, or tissues will be made as soon as possible and where practical within 8 hours of death. The test results will be included in the medical reports.

(3) As provided by law and medical conditions permitting, a blood or breath sample will be obtained from any surviving operator whose vehicle is involved in a fatal accident.

§ 634.36 Detection, apprehension, and testing of intoxicated drivers.

(a) Law enforcement personnel usually detect drivers under the influence of alcohol or other drugs by observing unusual or abnormal driving behavior. Drivers showing such behavior will be stopped immediately. The cause of the

unusual driving behavior will be determined, and proper enforcement action will be taken.

(b) When a law enforcement officer reasonably concludes that the individual driving or in control of the vehicle is impaired, field sobriety tests should be conducted on the individual. The DD Form 1920 will be used by law enforcement agencies in examining, interpreting, and recording results of such tests. Law enforcement personnel should use a standard field sobriety test (such as one-leg stand or walk and turn) and portable breathalyzers to conduct field sobriety tests.

§ 634.37 Voluntary breath and bodily fluid testing based on implied consent.

(a) Implied consent policy is explained in § 634.8.

(b) Tests may be administered only if the following conditions are met:

(1) The person was lawfully stopped while driving, operating, or in actual physical control of a motor vehicle on the installation.

(2) Reasonable suspicion exists to believe that the person was driving under the influence of alcohol or drugs.

(3) A request was made to the person to consent to the tests combined with a warning that failure to voluntarily submit to or complete a chemical test of bodily fluids or breath will result in the revocation of driving privileges.

(c) As stated in paragraphs (a) and (b) of this section, the law enforcement official relying on implied consent will warn the person that driving privileges will be revoked if the person fails to voluntarily submit to or complete a requested chemical test. The person does not have the right to have an attorney present before stating whether he or she will submit to a test, or during the actual test. Installation commanders will prescribe the type or types of chemical tests to be used. Testing will follow policies and procedures in § 634.35. The results of chemical tests conducted under the implied consent provisions of this regulation may be used as evidence in courts-martial, nonjudicial proceedings under Article 15 of the UCMJ, administrative actions, and civilian courts.

(d) Special rules exist for persons who have hemophilia, other blood-clotting disorders, or any medical or surgical disorder being treated with an anticoagulant. These persons—

(1) May refuse a blood extraction test without penalty.

(2) Will not be administered a blood extraction test to determine alcohol or other drug concentration or presence under this regulation.

(3) May be given breath or urine tests, or both.

(e) If a person suspected of intoxicated driving refuses to submit to a chemical test, a test will not be administered except as specified in § 634.38.

§ 634.38 Involuntary extraction of bodily fluids in traffic cases.

(a) *General.* The procedures outlined herein pertain only to the investigation of individuals stopped, apprehended, or cited on a military installation for any offense related to driving a motor vehicle and for whom probable cause exists to believe that such individual is intoxicated. Extractions of body fluids in furtherance of other kinds of investigations are governed by Rule 312(d), Military Rules of Evidence, and regulatory rules concerning requesting and granting authorizations for searches.

(1) Air Force policy on nonconsensual extraction of blood samples is addressed in AFR 160-12.

(2) Marine Corps personnel should not undertake the nonconsensual extraction of body fluids for reasons other than a valid medical purpose without first obtaining the advice and concurrence of the installation staff judge advocate or his or her designee.

(3) DLA policy on nonconsensual taking of blood samples is contained in DLAR 5700.7.

(b) *Rule.* Involuntary bodily fluid extraction is based on valid search and seizure authorization. An individual subject to the UCMJ who does not consent to chemical testing, as described above, may nonetheless be subjected to an involuntary extraction of bodily fluids, including blood and urine, only in accordance with the following procedures:

(1) An individual subject to the UCMJ who was driving a motor vehicle

involved in an accident resulting in death, personal injury, or serious property damage may be subjected to a nonconsensual bodily fluid extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant.

(i) A search authorization by an appropriate commander or military magistrate obtained pursuant to Rule 315, Military Rules of Evidence (Manual for Courts-Martial, chapter XXVII), is required prior to such nonconsensual extraction.

(ii) A search authorization is not required under such circumstances when there is a clear indication that evidence of intoxication will be found and there is reason to believe that the delay necessary to obtain a search authorization would result in the loss or destruction of the evidence sought.

(iii) Because warrantless searches are subject to close scrutiny by the courts, obtaining an authorization is highly preferable. Warrantless searches generally should be conducted only after coordination with the servicing staff judge advocate or legal officer, and attempts to obtain authorization from an appropriate official prove unsuccessful due to the unavailability of a commander or military magistrate.

(2) If authorization from the military magistrate or commander proves unsuccessful due to the unavailability of such officials, the commander of a medical facility is empowered by Rule 315(d), Military Rules of Evidence, to authorize such extraction from an individual located in the facility at the time the authorization is sought.

(i) Before authorizing the involuntary extraction, the commander of the medical facility should, if circumstances permit, coordinate with the servicing staff judge advocate or legal officer.

(ii) The medical facility commander authorizing the extraction under Rule 315(d) need not be on duty as the attending physician at the facility where the extraction is to be performed and the actual extraction may be accomplished by other qualified medical personnel.

(iii) The authorizing official may consider his or her own observations of the individual in determining probable cause.

(c) *Role of medical personnel.* Authorization for the nonconsensual extraction of blood samples for evidentiary purposes by qualified medical personnel is independent of, and not limited by, provisions defining medical care, such as the provision for nonconsensual medical care pursuant to AR 600-20, section IV.

(1) Extraction of blood will be accomplished by qualified medical personnel. (See Military Rules of Evidence 312(g).)

(i) In performing this duty, medical personnel are expected to use only that amount of force that is reasonable and necessary to administer the extraction.

(ii) Any force necessary to overcome an individual's resistance to the extraction normally will be provided by law enforcement personnel or by personnel acting under orders from the member's unit commander.

(iii) Life endangering force will not be used in an attempt to effect non-consensual extractions.

(iv) All law enforcement and medical personnel will keep in mind the possibility that the individual may require medical attention for possible disease or injury.

(2) Nonconsensual extractions of blood will be done in a manner that will not interfere with or delay proper medical attention. Medical personnel will determine the priority to be given involuntary blood extractions when other medical treatment is required.

§634.39 Testing at the request of the apprehended person.

(a) A person subject to tests under §634.8 may request that an additional test be done privately. The person may choose a doctor, qualified technician, chemist, registered nurse, or other qualified person to do the test. The person must pay the cost of the test. The test must be a chemical test approved by the State or host nation in an overseas command. All tests will be completed as soon as possible, with any delay being noted on the results.

(b) If the person requests this test, the apprehending police official may assist the suspect in making arrange-

ments. If the police official fails to or cannot obtain the additional test, the results of the tests done at the direction of a law enforcement official are not invalid and may still be used to support actions under separate Service regulations, UCMJ, and the U.S. Magistrate Court.

§634.40 Preparation of sworn statement.

For an example of a property prepared sworn statement on an intoxicated driver, see Army Form 2823.

SECTION IV—OFF-INSTALLATION
TRAFFIC ACTIVITIES

§634.41 General.

In areas not under military control, civil authorities enforce traffic laws. Law enforcement authorities will establish a system to exchange information with civil authorities. Off-installation traffic activities in overseas areas are governed by formal agreements with the host nation government. Procedures should be established to process reports received from civil authorities on serious traffic violations, accidents, and intoxicated driving incidents involving persons subject to this regulation.

§634.42 Compliance with State laws.

(a) Installation commanders will inform service members and DOD civilian employees to comply with State and local traffic laws when operating military motor vehicles.

(b) Commanders will coordinate with the proper civil law enforcement agency before moving Government vehicles that exceed legal limits or regulations or that may subject highway users to unusual hazards. (See AR-162/OPNAVINST 4600.11D/AFR 75-24/MCO 4643.5C/DLAR 4580.8.)

(c) Installation commanders will maintain liaison with civil enforcement agencies and encourage the following:

(1) Release of a Government vehicle operator to military authorities unless one of the conditions below exists.

(i) The offense warrants detention.

(ii) The person's condition is such that further operation of a motor vehicle could result in injury to the person or others.

(2) Prompt notice to military authorities when military personnel or drivers of Government motor vehicles have—

(i) Committed serious violations of civil traffic laws.

(ii) Been involved in traffic accidents.

(3) Prompt notice of actions by a State or host nation to suspend, revoke, or restrict the State or host nation driver's license (vehicle operation privilege) of persons who—

(i) Operate Government motor vehicles.

(ii) Regularly operate a POV on the installation. (See also §634.18.)

§634.43 Civil-military cooperative programs.

(a) *State-Armed Forces Traffic Workshop Program.* This program is an organized effort to coordinate military and civil traffic safety activities throughout a State or area. Installation commanders will cooperate with State and local officials in this program and provide proper support and participation.

(b) *Community-Installation Traffic Workshop Program.* Installation commanders should establish a local workshop program to coordinate the installation traffic efforts with those of local communities. Sound and practical traffic planning depends on a balanced program of traffic enforcement, engineering, and education. Civilian and military legal and law enforcement officers, traffic engineers, safety officials, and public affairs officers should take part.

Subpart E—Driving Records and the Traffic Point System

§634.44 Driving records.

Each Service and DLA will use its own form to record vehicle traffic accidents, moving violations, suspension or revocation actions, and traffic point assessments involving military and DOD civilian personnel, their family members, and other personnel operating motor vehicles on a military installation. Army installations will use

DA Form 3626 (Vehicle Registration/Driver Record) for this purpose. Table 5-1 prescribes mandatory minimum or maximum suspension or revocation periods. Traffic points are not assessed for suspension or revocation actions.

TABLE 634.44—SUSPENSION/REVOCA-TION OF DRIVING PRIVILEGES (SEE NOTES 1 AND 2.)

Assessment 1: Two-year revocation is mandatory on determination of facts by installation commander. (For Army, 5-year revocation is mandatory.)

Violation: Driving while driver's license or installation driving privileges are under suspension or revocation.

Assessment 2: One-year revocation is mandatory on determination of facts by installation commander.

Violation: Refusal to submit to or failure to complete chemical tests (implied consent).

Assessment 3: One-year revocation is mandatory on conviction.

Violation: Manslaughter (or negligent homicide by vehicle) resulting from the operation of a motor vehicle.

Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor (0.10% or greater on DOD installations; violation of civil law off post).

Driving a motor vehicle while under the influence of any narcotic, or while under the influence of any other drug (including alcohol) to the degree rendered incapable of safe vehicle operation.

Use of a motor vehicle in the commission of a felony. Fleeing the scene of an accident involving death or personal injury (hit and run).

Perjury or making a false statement or affidavit under oath to responsible officials relating to the ownership or operation of motor vehicles.

Unauthorized use of a motor vehicle belonging to another, when the act does not amount to a felony.

Assessment 4: Suspension for a period of 6 months or less or revocation for a period not to exceed 1 year is discretionary.

Violation: Mental or physical impairment (not including alcohol or other drug use) to the degree rendered incompetent to drive.

Commission of an offense in another State which, if committed on the installation, would be grounds for suspension or revocation.

Permitting an unlawful or fraudulent use of an official driver's license.

Conviction of fleeing, or attempting to elude, a police officer.

Conviction of racing on the highway.

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Assessment 5: Loss of OF 46 for minimum of 6 months is discretionary.

Violation: Receiving a second 1-year suspension or revocation of driving privileges within 5 years.

NOTES:

1. When imposing a suspension or revocation because of an off-installation offense, the effective date should be the same as the date of civil conviction, or the date that State or host-nation driving privileges are suspended or revoked. This effective date can be retroactive.

2. No points are assessed for revocation or suspension actions. Except for implied consent violations, revocations must be based on a conviction by a civilian court or court-martial, nonjudicial punishment under Article 15, UCMJ, or a separate hearing as addressed in this regulation. If revocation for implied consent is combined with another revocation, such as 1 year for intoxicated driving, revocations may run consecutively (total or 24 months) or concurrently (total of 12 months). The installation commander's policy should be applied systematically and not on a case-by-case basis.

§634.45 The traffic point system.

The traffic point system provides a uniform administrative device to impartially judge driving performance of Service and DLA personnel. This system is not a disciplinary measure or a substitute for punitive action. Further, this system is not intended to interfere in any way with the reasonable exercise of an installation commander's prerogative to issue, suspend, revoke, deny, or reinstate installation driving privileges.

§634.46 Point system application.

(a) The Services and DLA are required to use the point system and procedures prescribed herein without change.

(b) The point system in table 634.46 applies to all operators of U.S. Government motor vehicles, on or off Federal property. The system also applies to violators reported to installation officials in accordance with §634.32.

(c) Points will be assessed when the person is found to have committed a violation and the finding is by either the unit commander, civilian supervisor, a military or civilian court (including a U.S. Magistrate), or by payment of fine, forfeiture of pay or allowances, or posted bond, or collateral.

TABLE 634.46—POINT ASSESSMENT FOR MOVING TRAFFIC VIOLATIONS (SEE NOTE 1.)

- Violation: Reckless driving (willful and wanton disregard for the safety of persons or property).
Points assessed: 6
- Violation: Owner knowingly and willfully permitting a physically impaired person to operate the owner's motor vehicle.
Points assessed: 6
- Violation: Fleeing the scene (hit and run)-property damage only.
Points assessed: 6
- Violation: Driving vehicle while impaired (blood-alcohol content more than 0.05 percent and less than 0.10 percent).
Points assessed: 6
- Violation: Speed contests.
Points assessed: 6
- Violation: Speed too fast for conditions.
Points assessed: 2
- Violation: Speed too slow, causing potential safety hazard.
Points assessed: 2
- Violation: Failure of operator or occupants to use available restraint system devices while moving (operator assessed points).
Points assessed: 2
- Violation: Failure to properly restrain children in a child restraint system while moving (when child is 4 years of age or younger or the weight of child does not exceed 45 pounds).
Points assessed: 2
- Violation: One to 10 miles per hour over posted speed limit.
Points assessed: 3
- Violation: Over 10 but not more than 15 miles per hour above posted speed limit.
Points assessed: 4
- Violation: Over 15 but not more than 20 miles per hour above posted speed limit.
Points assessed: 5
- Violation: Over 20 miles per hour above posted speed limit.
Points assessed: 6
- Violation: Following too close.
Points assessed: 4
- Violation: Failure to yield right of way to emergency vehicle.
Points assessed: 4
- Violation: Failure to stop for school bus or school-crossing signals.
Points assessed: 4
- Violation: Failure to obey traffic signals or traffic instructions of an enforcement officer or traffic warden; or any official regulatory traffic sign or device requiring a full stop or yield of right of way; denying entry; or requiring direction of traffic.
Points assessed: 4
- Violation: Improper passing.
Points assessed: 4

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- Violation: Failure to yield (no official sign involved).
Points assessed: 4
- Violation: Improper turning movements (no official sign involved).
Points assessed: 3
- Violation: Wearing of headphones/earphones while driving motor vehicles (two or more wheels).
Points assessed: 3
- Violation: Failure to wear an approved helmet and/or reflectorized vest while operating or riding on a motorcycle, MOPED, or a three or four-wheel vehicle powered by a motorcycle-like engine.
Points assessed: 3
- Violation: Improper overtaking.
Points assessed: 3
- Violation: Other moving violations (involving driver behavior only).
Points assessed: 3
- Violation: Operating an unsafe vehicle. (See Note 2.)
Points assessed: 2
- Violation: Driver involved in accident is deemed responsible (only added to points assessed for specific offenses).
Points assessed: 1

NOTES:

1. When two or more violations are committed on a single occasion, the points assessed will be for the offense having the greater value.
2. This measure should be used for other than minor vehicle safety defects or when a driver or registrant fails to correct a minor defect (for example, a burned out headlight not replaced within the grace period on a warning ticket).

§ 634.47 Point system procedures.

- (a) Reports of moving traffic violations recorded on DD Form 1408 or DD Form 1805 will serve as a basis for determining point assessment. For DD Form 1408, return endorsements will be required from commanders or supervisors.
- (b) On receipt of DD Form 1408 or other military law enforcement report of a moving violation, the unit commander, designated supervisor, or person otherwise designated by the installation commander will conduct an inquiry. The commander will take or recommend proper disciplinary or administrative action. If a case involves judicial or nonjudicial actions, the final report of action taken will not be forwarded until final adjudication.
- (c) On receipt of the report of action taken (including action by a U.S. Mag-

istrate Court on DD Form 1805), the installation law enforcement officer will assess the number of points appropriate or the offense, and record the traffic points or the suspension or revocation of driving privileges on the person's driving record. Except as specified otherwise in this and other vice/DLA regulations, points will not be assessed or driving privileges suspended or revoked when the report of action taken indicates that neither disciplinary nor administrative action was taken.

(d) Installation commanders may require the following driver improvement measures as appropriate:

(1) Advisory letter through the unit commander or supervisor to any person who has acquired six traffic points within a 6-month period.

(2) Counseling or driver improvement interview, by the unit commander, of any person who has acquired more than six but less than 12 traffic points within a 6-month period. This counseling or interview should produce recommendations to improve driver performance.

(3) Referral for medical evaluation when a driver, based on reasonable belief, appears to have mental or physical limits that have had or may have an adverse affect on driving performance.

(4) Attendance at remedial driver training to improve driving performance.

(5) Referral to an alcohol or drug treatment or rehabilitation facility for evaluation, counseling, or treatment. This action is required for active military personnel in all cases in which alcohol or other drugs are a contributing factor to a traffic citation, incident, or accident.

(e) An individual's driving privileges may be suspended or revoked as provided by this regulation regardless of whether these improvement measures are accomplished.

(f) Persons whose driving privileges are suspended or revoked (for one violation or an accumulation of 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months) will be notified in writing through official channels (§634.11). Except for the mandatory minimum or

maximum suspension or revocation periods prescribed by table 634.44, the installation commander will establish periods of suspension or revocation. Any revocation based on traffic points must be no less than 6 months. A longer period may be imposed on the basis of a person's overall driving record considering the frequency, flagrancy, severity of moving violations, and the response to previous driver improvement measures. In all cases, military members must successfully complete a prescribed course in remedial driver training before driving privileges are reinstated.

(g) Points assessed against a person will remain in effect for point accumulation purposes for 24 consecutive months. The review of driver records to delete traffic points should be done routinely during records update while recording new offenses and forwarding records to new duty stations. Completion of a revocation based on points requires removal from the driver record of all points assessed before the revocation.

(h) Removal of points does not authorize removal of driving record entries for moving violations, chargeable accidents, suspensions, or revocations. Record entries will remain posted on individual driving records for the period of time indicated below.

(1) Chargeable nonfatal traffic accidents or moving violations—3 years.

(2) Nonmandatory suspensions or revocations—5 years.

(3) Mandatory revocations—7 years.

§ 634.48 Disposition of driving records.

Procedures will be established to ensure prompt notice to the installation law enforcement officer when a person assigned to or employed on the installation is being transferred to another installation, being released from military service, or ending employment.

(a) If persons being transferred to a new installation have valid points or other entries on the driving records, the law enforcement officer will forward the records to the law enforcement officer of the gaining installation. Gaining installation law enforcement officers must coordinate with applicable commanders and continue any existing suspension or revocation based

on intoxicated driving or accumulation of traffic points. Traffic points for persons being transferred will continue to accumulate as specified in § 634.47(g).

(b) Driving records of military personnel being discharged or released from active duty will be retained on file for 2 years and then destroyed. In cases of immediate reenlistment, change of officer component or military or civilian retirement when vehicle registration is continued, the record will remain active.

(c) Driving records of civilian personnel terminating employment will be retained on file for 2 years and then destroyed.

(d) Driving records of military family members containing point assessments or other entries will be forwarded to the sponsor's gaining installation in the same manner as for service members. At the new installation, records will be analyzed and made available temporarily to the sponsor's unit commander or supervisor for review.

(e) Driving records of retirees electing to retain installation driving privileges will be retained. Points accumulated or entries on the driver record regarding suspensions, revocations, moving violations, or chargeable accidents will not be deleted from driver records except per § 634.47 (g) and (h).

(f) Army users will comply with § 634.47 (g) and (h) by mailing the individual's DA Form 3626 to the gaining installation provost marshal.

Subpart F—Impounding Privately Owned Vehicles

§ 634.49 General.

This chapter provides the standards and procedures for law enforcement personnel when towing, inventorying, searching, impounding, and disposing of POVs. This policy is based on:

(a) The interests of the Services and DLA in crime prevention, traffic safety, and the orderly flow of vehicle traffic movement.

(b) The vehicle owner's constitutional rights to due process, freedom from unreasonable search and seizure, and freedom from deprivation of private property.

§ 634.50 Standards for impoundment.

(a) POVs should not be impounded unless the vehicles clearly interfere with ongoing operations or movement of traffic, threaten public safety or convenience, are involved in criminal activity, contain evidence of criminal activity, or are stolen or abandoned.

(b) The impoundment of a POV would be inappropriate when reasonable alternatives to impoundment exist.

(1) Attempts should be made to locate the owner of the POV and have the vehicle removed.

(2) The vehicle may be moved a short distance to a legal parking area and temporarily secured until the owner is found.

(3) Another responsible person may be allowed to drive or tow the POV with permission from the owner, operator, or person empowered to control the vehicle. In this case, the owner, operator, or person empowered to control the vehicle will be informed that law enforcement personnel are not responsible for safeguarding the POV.

(c) Impounding of POVs is justified when any of the following conditions exist:

(1) The POV is illegally parked—

(i) On a street or bridge, in a tunnel, or is double parked, and interferes with the orderly flow of traffic.

(ii) On a sidewalk, within an intersection, on a cross-walk, on a railroad track, in a fire lane, or is blocking a driveway, so that the vehicle interferes with operations or creates a safety hazard to other roadway users or the general public. An example would be a vehicle parked within 15 feet of a fire hydrant or blocking a properly marked driveway of a fire station or aircraft-alert crew facility.

(iii) When blocking an emergency exit door or any public place (installation theater, club, dining hall, hospital, and other facility).

(iv) In a “tow-away” zone that is so marked with proper signs.

(2) The POV interferes with—

(i) Street cleaning or snow removal operations and attempts to contact the owner have been unsuccessful.

(ii) Emergency operations during a natural disaster or fire or must be removed from the disaster area during cleanup operations.

(3) The POV has been used in a crime or contains evidence of criminal activity.

(4) The owner or person in charge has been apprehended and is unable or unwilling to arrange for custody or removal.

(5) The POV is mechanically defective and is a menace to others using the public roadways.

(6) The POV is disabled by a traffic incident and the operator is either unavailable or physically incapable of having the vehicle towed to a place of safety for storage or safekeeping.

(7) Law enforcement personnel reasonably believe the vehicle is abandoned.

§ 634.51 Towing and storage.

(a) Impounded POVs may be towed and stored by either the Services and DLA or a contracted wrecker service depending on availability of towing services and the local commander’s preference.

(b) The installation commander will designate an enclosed area on the installation that can be secured by lock and key for an impound lot to be used by the military or civilian wrecker service. An approved impoundment area belonging to the contracted wrecker service may also be used provided the area assures adequate accountability and security of towed vehicles. One set of keys to the enclosed area will be maintained by the installation law enforcement officer or designated individual.

(c) Temporary impoundment and towing of POVs for violations of the installation traffic code or involvement in criminal activities will be accomplished under the direct supervision of law enforcement personnel.

§ 634.52 Procedures for impoundment.

(a) *Unattended POVs.* (1) DD Form 2504 (Abandoned Vehicle Notice) will be conspicuously placed on POVs considered unattended. This action will be documented by an entry in the installation law enforcement desk journal.

(2) The owner will be allowed 3 days from the date the POV is tagged to remove the vehicle before impoundment action is initiated. If the vehicle has not been removed after 3 days, it will

be removed by the installation towing service or the contracted wrecker service. If a contracted wrecker service is used, a DD Form 2505 (Abandoned Vehicle Removal Authorization) will be completed and issued to the contractor by the installation law enforcement office.

(3) After the vehicle has been removed, the installation law enforcement officer or the contractor will complete DD Form 2506 (Vehicle Impoundment Report) as a record of the actions taken.

(i) An inventory listing personal property will be done to protect the owner, law enforcement personnel, the contractor, and the commander.

(ii) The contents of a closed container such as a suitcase inside the vehicle need not be inventoried. Such articles should be opened only if necessary to identify the owner of the vehicle or if the container might contain explosives or otherwise present a danger to the public. Merely listing the container and sealing it with security tape will suffice.

(iii) Personal property must be placed in a secure area for safekeeping.

(4) DD Form 2507 (Notice of Vehicle Impoundment) will be forwarded by certified mail to the address of the last known owner of the vehicle to advise the owner of the impoundment action, and request information concerning the owner's intentions pertaining to the disposition of the vehicle.

(b) *Stolen POVs or vehicles involved in criminal activity.* (1) When the POV is to be held for evidentiary purposes, the vehicle should remain in the custody of the applicable Service or DLA until law enforcement purposes are served.

(2) Recovered stolen POVs will be released to the registered owner, unless held for evidentiary purposes, or to the law enforcement agency reporting the vehicle stolen, as appropriate.

(3) A POV held on request of other authorities will be retained in the custody of the applicable Service or DLA until the vehicle can be released to such authorities.

§634.53 Search incident to impoundment based on criminal activity.

Search of a POV in conjunction with impoundment based on criminal activ-

ity will likely occur in one of the following general situations:

(a) The owner or operator is not present. This situation could arise during traffic and crime-related impoundments and abandoned vehicle seizures. A property search related to an investigation of criminal activity should not be conducted without search authority unless the item to be seized is in plain view or is readily discernible on the outside as evidence of criminal activity. When in doubt, proper search authority should be obtained before searching.

(b) The owner or operator is present. This situation can occur during either a traffic or criminal incident, or if the operator is apprehended for a crime or serious traffic violation and sufficient probable cause exists to seize the vehicle. This situation could also arise during cases of intoxicated driving or traffic accidents in which the operator is present but incapacitated or otherwise unable to make adequate arrangements to safeguard the vehicle. If danger exists to the police or public or if there is risk of loss or destruction of evidence, an investigative type search of the vehicle may be conducted without search authority. (Army, see AR 190-22; and Air Force, see AFP 125-2.)

§634.54 Disposition of vehicles after impoundment.

(a) If a POV is impounded for evidentiary purposes, the vehicle can be held for as long as the evidentiary or law enforcement purpose exists. The vehicle must then be returned to the owner without delay unless directed otherwise by competent authority.

(b) If the vehicle is unclaimed after 120 days from the date notification was mailed to the last known owner or the owner released the vehicle by properly completing DD Form 2505, the vehicle will be disposed of by one of the following procedures:

(1) Release to the lienholder, if known.

(2) Processed as abandoned property in accordance with DOD 4160.21-M.

APPENDIX A TO PART 634—REFERENCES

Publications and forms referenced in this part may be viewed at the Office of Provost

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Marshal at any Army installation. Department of Defense publications are also available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; telephone (703) 487-4684.

Section I

Required Publications

- AFP 125-2*. Technical Guide for Police Traffic Operations. (Cited in §634.53.)
- AFR 30-2*. Social Action Program. (Cited in §634.13.)
- AFR 75-24/AR 55-162/DLAR 4580.8/MCO 4643.5C/OPNAVINST 4600.11D*. Permits for Oversize, Overweight, or Other Special Military Movements on Public Highways in the U.S. (Cited in §634.42.)
- AFR 75-88/AR 55-80/DLAR 4500.19/MCO 11210.2C/OPNAVINST 11210.1B*. Highways for National Defense. (Cited in §634.32.)
- AFR 110-15*. Use of U.S. Magistrates for Trial of Misdemeanors Committed by Civilians. (Cited in §634.32.)
- AFR 125-15*. Motor Vehicle Registration and Related Requirements. (Cited in §634.19.)
- AFR 160-12*. Professional Policies and Procedures. (Cited in §634.38.)
- AR 190-22*. Searches, Seizures, and Disposition of Property. (Cited in §634.53.)
- AR 190-29*. Minor Offenses and Uniform Violation Notices Referred to U.S. District Courts. (Cited in §634.32.)
- AR 210-10*. Administration. (Cited in §634.7.)
- AR-385-40*. Accident Reporting and Records. (Cited in §634.30.)
- AR 385-55*. Prevention of Motor Vehicle Accidents. (Cited in §634.25.)
- AR 600-20*. Army Command Policies and Procedures. (Cited in §634.38.)
- AR 600-85*. Alcohol and Drug Abuse Prevention and Control Program. (Cited in §634.14.)
- AR 601-280*. Total Army Retention Program. (Cited in §634.12.)
- DLAR 5700.7*. Search and Seizure. (Cited in §§634.7 and 634.38.)
- DLAR 5720.4*. Preparing and Processing Minor Offenses and Violation Notices Referred to U.S. District Court. (Cited in §634.32.)
- DOD 4160.21-M, September 1982*. Defense Disposal Manual. (Cited in §634.54.)
- DODD 5530.3, June 1987*. International Arguments. (Cited in §634.18.)
- FPM Supp 792-2*. Alcohol and Drug Abuse Programs. (Cited in §634.14.)
- MCO 5100.19C*. Marine Corps Traffic Safety Program. (Cited in §634.13.)
- MCO P5300.12*. USMC Substance Abuse Program. (Cited in §§634.13 and 634.30.)
- OPNAVINST 5100-12D*. Navy Traffic Safety Program. (Cited in §§634.13 and 634.30.)

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Section II

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

- AR 600-37*. Unfavorable Information.
- AR 600-200*. Enlisted Personnel Management System.
- AR 635-20*. Enlisted Personnel.

Section III

Prescribed Forms

- DA Form 3626*. Vehicle Registration/Driver Record. (Prescribed in §634.44.)
- DD Form 1920*. Alcohol Influence Report. (Prescribed in §634.33.)
- DD Form 2220*. DOD Registered Vehicle. (Prescribed in §634.19.)
- DD Form 2504*. Abandoned Vehicle Notice. (Prescribed in §634.52.)
- DD Form 2505*. Abandoned Vehicle Removal Authorization. (Prescribed in §634.52.)
- DD Form 2506*. Vehicle Impoundment Report. (Prescribed in §634.52.)
- DD Form 2507*. Notice of Vehicle Impoundment. (Prescribed in §634.52.)

APPENDIX B TO PART 634—NOTIFICATION OF STATE DRIVER'S LICENSE AGENCIES

The installation commander will notify the State driver's license agency of those personnel whose installation driving privileges are revoked for 1 year or more, following final adjudication of the intoxicated driving offense or for refusing to submit to a lawful blood-alcohol content test in accordance with §634.8. This notification will include the basis for the suspension and the blood-alcohol level. The notification will be sent to the State in which the driver's license was issued. A sample letter format is provided at figure B-1. State driver's license agencies are listed below:

Alabama

Motor Vehicle Division, 2721 Gunter Park Drive, Montgomery, AL 36101, (205) 271-3250

Alaska

Motor Vehicle Division, P.O. Box 100960, Anchorage, AK 99510, (907) 269-5572

Arizona

Motor Vehicle Division, 1801 West Jefferson Street, Phoenix, AZ 85007, (602) 255-7295

Arkansas

Motor Vehicle Division, Joel & Ledbetter Bldg., 7th and Wolfe Streets, Little Rock, AR 72203, (501) 371-1886

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California

Department of Motor Vehicles, P.O. Box 932340, Sacramento, CA 94232, (916) 445-0898

Colorado

Motor Vehicle Division, 140 West Sixth Avenue, Denver, CO 80204, (303) 866-3158

Connecticut

Department of Motor Vehicles, 60 State Street, Wethersfield, CT 06109, (203) 566-5904

Delaware

Motor Vehicle Director, State Highway Administration Bldg., P.O. Box 698, Dover, DE 19903, (302) 736-4421

District of Columbia

Department of Transportation, Bureau of Motor Vehicles, 301 C Street, NW., Washington, DC 20001, (202) 727-5409

Florida

Division of Motor Vehicles, Neil Kirkman Building, Tallahassee, FL 32301, (904) 488-6921

Georgia

Motor Vehicle Division, Trinity-Washington Bldg., Room 114, Atlanta, GA 30334, (404) 656-4149

Hawaii

Division of Motor Vehicle and Licensing, 1455 S. Benetania Street, Honolulu, HI 96814, (808) 943-3221

Idaho

Transportation Department, 3311 State Street, P.O. Box 34, Boise, ID 83731, (208) 334-3650

Illinois

Secretary of State, Centennial Building, Springfield, IL 62756, (217) 782-4815

Indiana

Bureau of Motor Vehicles, State Office Building, Room 901, Indianapolis, IN 46204, (317) 232-2701

Iowa

Department of Transportation, Office of Operating Authority, Lucas Office Bldg., Des Moines, IA 50319, (515) 281-5664

Kansas

Department of Revenue, Division of Vehicles, Interstate Registration Bureau, State Office Bldg. Topeka, KS 66612, (913) 296-3681

Kentucky

Department of Transportation, New State Office Building, Frankfort, KY 40622, (502) 564-4540

Louisiana

Motor Vehicle Administrator, S. Foster Drive, Baton Rouge, LA 70800, (504) 925-6304

Maine

Department of State, Motor Vehicle Division, Augusta, ME 04333, (207) 289-5440

Maryland

Motor Vehicle Administration, 6601 Ritchie Highway, NE., Glen Burnie, MD 21062, (301) 768-7000

Massachusetts

Registry of Motor Vehicles, 100 Nashua Street, Boston, MA 02114, (617) 727-3780

Michigan

Department of State, Division of Driver Licenses and Vehicle Records, Lansing, MI 48918, (517) 322-1486

Minnesota

Department of Public Safety, 108 Transportation Building, St. Paul, MN 55155, (612) 296-2138

Mississippi

Office of State Tax Commission, Woolfolk Building, Jackson, MS 39205, (601) 982-1248

Missouri

Department of Revenue, Motor Vehicles Bureau, Harry S Truman Bldg., 301 W. High Street, Jefferson City, MO 65105, (314) 751-3234

Montana

Highway Commission, Box 4639, Helena, MT 59604, (406) 449-2476

Nebraska

Department of Motor Vehicles, P.O. Box 94789, Lincoln, NE 68509, (402) 471-3891

Nevada

Department of Motor Vehicles, Carson City, NV 89711, (702) 885-5370

New Hampshire

Department of Safety, Division of Motor Vehicles, James H. Haynes Bldg., Concord, NH 03305, (603) 271-2764

New Jersey

Motor Vehicle Division, 25 S. Montgomery Street, Trenton, NJ 08666, (609) 292-2368

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New Mexico

Motor Transportation Division, Joseph M. Montoya Building, Santa Fe, NM 87503, (505) 827-0392

New York

Division of Motor Vehicles, Empire State Plaza, Albany, NY 12228, (518) 474-2121

North Carolina

Division of Motor Vehicles, Motor Vehicles Bldg., Raleigh, NC 27697, (919) 733-2403

North Dakota

Motor Vehicle Department, Capitol Grounds, Bismarck, ND 58505, (701) 224-2619

Ohio

Bureau of Motor Vehicles, P.O. Box 16520, Columbus, OH 43216, (614) 466-4095

Oklahoma

Oklahoma Tax Commission, Motor Vehicle Division, 2501 Lincoln Boulevard, Oklahoma City, OK 73194, (405) 521-3036

Oregon

Motor Vehicles Division, 1905 Lana Avenue, NE., Salem, OR 97314, (503) 378-6903

Pennsylvania

Department of Transportation, Bureau of Motor Vehicles, Transportation and Safety Bldg., Harrisburg, PA 17122, (717) 787-3130

Rhode Island

Department of Motor Vehicles, State Office Building, Providence, RI 02903, (401) 277-6900

South Carolina

Motor Vehicle Division, P.O. Drawer 1498, Columbia, SC 29216, (803) 758-5821

South Dakota

Division of Motor Vehicles, 118 W. Capitol, Pierre, SD 57501, (605) 773-3501

Tennessee

Department of Revenue, Motor Vehicle Division, 500 Deaderick Street, Nashville, TN 37242, (615) 741-1786

Texas

Department of Highways and Public Transportation, Motor Vehicle Division, 40th and Jackson Avenue, Austin, TX 78779, (512) 475-7686

Utah

Motor Vehicle Division, State Fairgrounds, 1095 Motor Avenue, Salt Lake City, UT 84116, (801) 533-5311

Vermont

Department of Motor Vehicles, State Street, Montpelier, VT 05603, (802) 828-2014

Virginia

Department of Motor Vehicles, 2300 W. Broad Street, Richmond, VA 23220, (804) 257-1855

Washington

Department of Licensing, Highways-Licenses Building, Olympia, WA 98504, (206) 753-6975

West Virginia

Department of Motor Vehicles, 1800 Washington Street, East, Charleston, WV 25317, (304) 348-2719

Wisconsin

Department of Transportation, Reciprocity and Permits, P.O. Box 7908, Madison, WI 53707, (608) 266-2585

Wyoming

Department of Revenue, Policy Division, 122 W. 25th Street, Cheyenne, WY 82002, (307) 777-5273

Guam

Deputy Director, Revenue and Taxation, Government of Guam, Agana, Guam 96910, (no phone number available)

Puerto Rico

Department of Transportation and Public Works, Bureau of Motor Vehicles, P.O. Box 41243, Minillas Station, Santurce, PR 00940, (809) 722-2823

FIGURE B-1—Sample Letter to State Driver's License Authority

DEPARTMENT OF THE ARMY

*39th Infantry Division, Fort Collins, Colorado
81079-9906*

Office of the Provost Marshal,
*Motor Vehicle Division, 140 West Sixth Avenue,
Denver, Colorado 80204.*

This letter is your notification that on 15 May 1996, ROE, Richard L., PFC 000-00-0000, a member of the U.S. Army, 39th Infantry Division, Fort Collins, Colorado was found guilty of intoxicated driving in a trial by court-martial.

He holds a Colorado driver's license, number X94U28, issued 1 June 1995, and expiring on 1 June 1999. He was arrested on 15 May 1996 at Fort Collins, Colorado by Military Police while driving a 1989 Chevrolet Nova, blue in color, bearing Colorado license plate number 359-143.

PFC Roe refused to submit to a chemical test to determine his blood alcohol content after being advised of the implied consent

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provisions of the Fort Collins installation traffic code.

Based on the above information, PFC Roe's installation driving privileges have been revoked for one year.

PFC Roe's current address is 1511 Mountain View Road, Denver, Colorado 80206.

Sincerely,

Max R. Smith,
CPT, MPC, AR 19 Administrative Officer.

APPENDIX C TO PART 634—DOD DIRECTIVE 5525.4, ENFORCEMENT OF STATE LAWS ON DOD INSTALLATIONS

DEPARTMENT OF DEFENSE DIRECTIVE

November 2, 1981

Number 5525.4, ASD (MRA&L)

Subject: Enforcement of State Traffic Laws on DoD Installations.

References: (a) DoD Instruction 6055.4, "Department of Defense Traffic Safety Program," November 7, 1978.

(b) Delegation of Authority to the Secretary of Defense by the Administrator, General Services Administration, March 20, 1981 (enclosure 1).

(c) Title 18, United States Code, section 13.

(d) Title 40, United States Code, section 318c.

A. Purpose

This Directive establishes policies pursuant to the requirements of reference (a) and to authority delegated to the Secretary of Defense under reference (b) for the enforcement, on DoD military installations, of those state vehicular and pedestrian traffic laws that cannot be assimilated under reference (c).

B. Applicability and Scope

1. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

2. The provisions encompass all persons who operate or control a motor vehicle or otherwise use the streets of a military installation over which the United States exercises exclusive or concurrent legislative jurisdiction.

3. The provisions govern only vehicular and traffic offenses or infractions that cannot be assimilated under reference (c), thereby precluding application of state laws to traffic offenses committed on military installations.

C. Policy

1. It is the policy of the Department of Defense that an effective, comprehensive traffic

safety program be established and maintained at all military installations as prescribed in reference (a).

2. State vehicular and pedestrian traffic laws that are now or may hereafter be in effect shall be expressly adopted and made applicable on military installations to the extent provided by this Directive. All persons on a military installation shall comply with the vehicular and pedestrian traffic laws of the state in which the installation is located.

3. Pursuant to the authority established in enclosure 1, installation commanders of all DoD installations in the United States and over which the United States has exclusive or concurrent legislative jurisdiction are delegated the authority to establish additional vehicular and pedestrian traffic rules and regulations for their installations. All persons on a military installation shall comply with locally established vehicular and pedestrian traffic rules and regulations. (Amendment 1, Ch 1 (10/31/86))

4. A person found guilty of violating, on a military installation, any state vehicular or pedestrian traffic law or local installation vehicular or pedestrian traffic rule or regulation made applicable to the installation under the provisions of this Directive is subject to a fine of not more than \$50 or imprisonment for not more than 30 days, or both, for each violation (40 U.S.C. 318c (reference (d))). (Amendment 1, Ch 1 (10/31/86))

5. This Directive does not limit the application of any Federal law or regulation or, under 18 U.S.C. 13 (reference (c)), any state law made applicable to offenses committed on military installations.

6. A copy of this Directive shall be posted in an appropriate place on the DOD installation concerned.

D. Responsibilities

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall modify this Directive, as appropriate.

2. Secretaries of the Military Departments shall comply with this Directive.

E. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

William H. Taft, IV,
Deputy Secretary of Defense.

Enclosure—1

1. Delegation of Authority: Nov 2, 81, 5525.4 (Encl 1).

ENCLOSURE 1-DELEGATION OF AUTHORITY

GENERAL SERVICES ADMINISTRATION

(D-81-___ 6820-22

Delegation of Authority to the Secretary of Defense

1. Purpose. This delegation authorizes the Secretary of Defense to assist in controlling vehicular and pedestrian traffic on military installations in the United States.

2. Effective date. This delegation became effective on March 20, 1961.

3. Delegation.

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the Act of June 1, 1948 (62 Stat. 281), as amended, authority is hereby delegated to the Secretary of Defense to make all needful rules and regulations, and to attach to these rules and regulations such reasonable penalties, not to exceed those prescribed in 40 U.S.C. 318c, as will ensure their enforcement for governing vehicular and pedestrian traffic on military installations of the Department of Defense, as defined in 40 U.S.C. 612, in the United States and over which the United States has exclusive or concurrent legislative jurisdiction.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the limitations and requirements of the above-cited acts, and the policies, procedures, and controls prescribed by the General Services Administration.

4. Effect on other directives. FPMR Temporary Regulation D-28 is revoked.

Dated: June 24, 1981.

(Signed) Gerald P. Carmen,
Administrator.

APPENDIX D TO PART 634—GLOSSARY

Section I

Abbreviations

ADAPCP
Alcohol and Drug Abuse Prevention and Control Program
ADCO
Alcohol and Drug Control Officer
ASAP
Alcohol Safety Action Projects
BAC
blood alcohol content
CAAC
Counseling and Assistance Center
CAIG
centralized accident investigation, ground
CFR
Code of Federal Regulations
CG
commanding general
CONUS
continental United States
DA
Department of the Army
DLA

Defense Logistics Agency
DOD
Department of Defense
DOT
Department of Transportation
HQDA
Headquarters, Department of the Army
MPMIS
Military Police Management Information System
MTMCTEA
Military Traffic Management Command Transportation Engineering Agency
NADSAP
Navy Alcohol and Drug Safety Action Program
NAF
nonappropriated fund
NHSPS
National Highway Safety Program Standards
NHTSA
National Highway Traffic Safety Administration
POV
privately owned vehicle
SOFA
status of forces agreement
SOP
standing operating procedure
STAMIS
Standard Army Management Information System
TRADOC
U.S. Army Training and Doctrine Command
UCMJ
Uniform Code of Military Justice
USAF
United States Air Force
USC
United States Code
USMC
United States Marine Corps
USN
United States Navy

Section II

Terms

Active Duty Personnel

Military personnel, whether Active Army, U.S. Army Reserve, or Army National Guard of the United States, who are on active duty under Title 10, United States Code.

Alcohol Safety Action Program (ASAP)

A program sponsored by a State, in cooperation with the NHTSA, to reduce highway deaths, injuries, and property damage resulting from traffic accidents in which alcohol is a major contributing factor.

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Army Drug and Alcohol Prevention and Control Program (ADAPCP)

An Army program that provides for alcohol and drug problems (appropriate education or treatment).

Chemical Breath-testing Device

An instrument using photoelectric or other physical or chemical means to quantitatively determine blood-alcohol concentrations.

Collision Diagram

A plan of an intersection or section of roadway on which reported accidents are diagrammed by means of arrows showing manner of collision.

Condition Diagram

A scale drawing of an intersection or section of roadway that shows all objects and physical conditions that bear on traffic movement and safety.

Conviction

A final adjudication that may include one or more of the following:

- a. An unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance-in-court.
- b. Pleas of nolo contendere accepted by a court.
- c. Payment of a fine.
- d. Pleas of guilty or finding of guilty on a charge of violating State, Federal, or host nation civil law; or the UCMJ.
- e. Judicial or nonjudicial punishment imposed under the UCMJ.

Driver

Any person who drives or is in physical control of a motor vehicle. A driver is in physical control when in position to control the motor vehicle, whether to regulate or restrain its operation or movement. For example, sitting in a parked car behind the steering wheel, keeping it in restraint or in a position to control its movement. The word "driver" is interchangeable with the word "operator."

Driver's License

A license to operate a motor vehicle under the laws of a State, the District of Columbia, a U.S. territory or possession, a host country, or under international agreements (international driver's license). Also, a vehicle operator's permit issued by an agency of the U.S. Government, or an overseas command.

Driving Privilege

The privilege extended by an installation commander to a person permitting the oper-

ation of a motor vehicle within the limits of the installation.

General Officer

A term used to describe officers in the military grade of 0-7 or above, including officers frocked to the grade of, in the Army, Air Force, Marine Corps, or Navy.

General Officer Letter of Reprimand

A memorandum or letter of reprimand, administrative in nature, prepared in accordance with AR 600-37 and signed by any officer serving in the grade of 0-7 or above in the Army, Air Force, Marine Corps, or Navy.

Government Motor Vehicle

A motor vehicle owned, rented, or leased by DOD. This includes vehicles owned, rented, or leased by NAF activities of the military departments and DOD.

High Accident Frequency Location

A location, intersection, or length of roadway, normally not more than one-half mile in length, where an unusually high number of accidents have occurred.

Host Nation

Any foreign country or possession in which an installation is located.

Installation or Activity Commander

A term applied equally to CONUS installation commanders and overseas community commanders.

Intoxicated Driving

Includes one or more of the following:

- a. Driving, operating, or being in actual physical control of a motor vehicle under any intoxication caused by alcohol or drugs in violation of Article 111 of the UCMJ or a similar law of the jurisdiction in which the vehicle is being operated.
- b. Driving, operating, or being in actual physical control of a motor vehicle with a BAC of 0.10 or higher on a military installation or in an area where traffic operations are under military supervision.
- c. Driving, operating, or being in actual physical control of a motor vehicle with a BAC of 0.10 or higher in violation of the law of the jurisdiction in which the vehicle is being operated.
- d. Driving, operating, or being in actual physical control of a motor vehicle with a BAC of 0.05 but less than 0.10 in violation of the law of the jurisdiction in which the vehicle is being operated if the jurisdiction imposes a suspension or revocation solely on the basis of the BAC level.

Law Enforcement Personnel (Officials)

Persons under supervision of the installation law enforcement officer who are authorized to direct, regulate, and control traffic, and to apprehend or arrest violators of laws or regulations. They are usually identified as military police, security police, civilian guards, or DOD police.

Major Command/Major Commanders

The level of command between the base, installation, or community commander and the Service headquarters.

Moped

Any two or three-wheel device having operative capability by—

- a. Human propulsion power (or no pedals if powered solely by electrical energy).
- b. An automatic transmission.
- c. A motor that produces less than two gross brake horsepower, and—

(1) Propels the device at a maximum speed of not more than 30 miles per hour on level ground.

(2) Has a maximum engine size of 50 cubic centimeters.

Motorcycle

Every motor vehicle that has a seat or saddle for use of the rider and is designed to travel on not more than three wheels in contact with the ground. Tractors and Mopeds are excluded.

Motor Vehicle

Any vehicle driven or drawn by mechanical power, and manufactured primarily for use on public streets, roads, and highways.

(Vehicles operated only on a rail or rails are excluded.)

Motor Vehicle Registration

The process of issuing registration certificate and registration plates for a motor vehicle under the law of a State (State registration). The term also applies to the registration form and identification media issued by a host nation or overseas command, or per this regulation for a motor vehicle authorized to operate on a military installation in the United States or its territories.

Motor Vehicle Traffic Accident

An unintended event causing injury or damage, and involving one or more motor vehicles on a highway, road, or street that is publicly maintained and open for public vehicular travel. Motor vehicle traffic accident classification. The classification of traffic accidents according to severity of injuries or property damage sustained. Major classifications include the following:

- a. Severity of injury.

(1) Fatal accident. A motor vehicle accident that results in fatal injuries to one or more personnel. A fatal injury is one that results in death within 12 months of the accident causing the injury.

(2) Incapacitating injury. An injury, other than fatal, that prevents the injured person from walking, driving, or normally continuing the activities that he or she was capable of performing before the accident. Examples are severe lacerations, broken or distorted limb, skull fracture, crushed chest, internal injury, unconsciousness when taken from the accident scene, or inability to leave the accident scene without help.

(3) Nonincapacitating evident injury. An injury, other than fatal and incapacitating, that is evident to any person at the scene of the accident. Examples are lump on head, abrasions, or minor lacerations.

(4) Possible injury. An injury reported or claimed that is not a fatal, incapacitating, or nonincapacitating evident injury. Examples are momentary unconsciousness, claim of injuries that are not evident, limping, or complaint of pain, nausea, or hysteria.

- b. Severity of vehicle damage.

(1) Disabling damage. Any damage to a vehicle such that it cannot be driven (or towed in the case of trailers) from the scene of the accident in the usual manner by daylight after simple repairs, and without further damage or hazard to itself, other traffic elements, or the roadway.

(2) Functional damage. Any nondisabling damage to a vehicle that affects operation of the vehicle or its parts. Examples are doors, windows, hood, and trunk lids that will not operate properly; broken glass that obscures vision; or any damage that could prevent the motor vehicle from passing an official motor vehicle inspection.

(3) Other motor vehicle damage. Any damage to a vehicle that is neither disabling nor functional damage. Such damage usually affects only the load on the vehicle or the appearance of the motor vehicle. Examples are damage to hubcaps, trim, or grill; glass cracks that do not interfere with vision; dents; scratches; body punctures; or damage to load.

Moving Violation

A violation of any traffic law, ordinance, or regulation while operating a vehicle. Moving violations typically involve one or both of the following:

a. Unsafe act. An act or omission in traffic that is hazardous.

b. Unsafe condition. Causing or permitting an illegal and possibly hazardous condition of—

(1) Highways, roads, or streets used by traffic.

(2) Vehicles used in traffic.

(3) A pedestrian or driver in traffic.

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Navy Alcohol and Drug Safety Action Program (NADSAP)

A Navy program that provides a means to identify Navy personnel involved in alcohol-related situations, within the legal and medical systems, at the earliest indication of alcohol misuse or alcoholism.

Pedicycle

A vehicle operated solely by pedals and propelled by human power.

Pedestrian

Any person not in or on a motor vehicle or other road vehicle.

Reciprocity

Reciprocal action between State or host nation and military authorities to suspend or revoke a person's OF 46, installation driving privilege, or State, host nation, or overseas command driver's license based on action initiated by either authority.

Revocation of Driver's License

The termination by formal action of State, host nation, or overseas command authority of a person's license or privilege to operate a motor vehicle on the public roadways. This termination is not subject to renewal or restoration except that application may be presented and acted on by the State, host nation, or overseas command authority after the expiration of the period set by State or host nation law or overseas command regulation.

Revocation of Driving Privileges

Action taken by an installation commander to terminate a privilege to operate a motor vehicle on a military installation. State One of the U.S. States, the District of Columbia, the Commonwealth of Puerto Rico, and the territory of Guam.

Suspension of Driver's License

The temporary withdrawal by formal action of State, host nation, or overseas command authority of a person's license or privilege to operate a motor vehicle on the public highways.

Suspension of Driving Privileges

The temporary withdrawal by an installation commander of a person's privilege to operate a motor vehicle on a military installation for up to 12 months. Privileges normally are automatically restored on the day after the date the suspension ends.

Traffic

Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances, either singly or together, using any roadway.

Traffic Control Devices

Signs, signals, markings, lights, and devices placed by a proper official to regulate, warn, or guide traffic.

Traffic Engineering

Planning and geometric design of streets, highways, and abutting lands, and matters concerned with traffic operations on them related to the safe, convenient, and economical transportation of persons and goods.

Traffic Laws

All laws, ordinances, and regulations concerning roadway traffic, including regulations on weight, size, and type of vehicles and vehicle cargo.

PART 636—MOTOR VEHICLE TRAFFIC SUPERVISION (SPECIFIC INSTALLATIONS)

Sec.

636.0 Scope of this part.

Subpart A—Fort Stewart, Georgia

- 636.1 Responsibilities.
- 636.2 Program objectives.
- 636.3 Suspension or revocation of driving privileges.
- 636.4 Administrative due process for suspensions and revocations.
- 636.5 Army administrative actions against intoxicated drivers.
- 636.6 Remedial driver training program.
- 636.7 Extensions of suspensions and revocations.
- 636.8 Registration policy.
- 636.9 Registration requirement.
- 636.10 Hunter Army Airfield vehicle registration.
- 636.11 Installation traffic codes.
- 636.12 Traffic accident investigation.
- 636.13 Traffic accident investigation reports.
- 636.14 Parking.
- 636.15 Traffic violation reports.
- 636.16 Detection, apprehension, and testing of intoxicated drivers.
- 636.17 Compliance with State laws.
- 636.18 Driving records.
- 636.19 Point system application.
- 636.20 Point system procedures.
- 636.21 Obedience to official traffic control devices.
- 636.22 Speed regulations.
- 636.23 Turning movements.
- 636.24 Driving on right side of roadway; use of roadway.
- 636.25 Right-of-way.
- 636.26 Pedestrian's rights and duties.
- 636.27 Regulations for bicycles.
- 636.28 Special rules for motorcycles/mopeds.

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- 636.29 Go-carts, minibikes, and All Terrain Vehicles (ATV's).
- 636.30 Stopping, standing and parking.
- 636.31 Abandoned vehicles.
- 636.32 Miscellaneous instructions.
- 636.33 Vehicle safety inspection criteria.
- 636.34 Restraint systems.
- 636.35 Headphones and earphones.
- 636.36 Alcoholic beverages.
- 636.37 Use of "Denver Boot" device.
- 636.38 Impounding privately owned vehicles (POVs).

APPENDIX A TO PART 636—REFERENCES
APPENDIXES B—C TO PART 636 [RESERVED]
APPENDIX D TO PART 636—GLOSSARY

AUTHORITY: 10 U.S.C. 30112(g); 5 U.S.C. 2951; Pub. L. 89-564; 89-670; 91-605; and 93-87.

SOURCE: 56 FR 28077, June 19, 1991, unless otherwise noted.

§ 636.0 Scope of this part.

This part contains regulations which are in addition to the motor vehicle supervision regulations contained in 32 CFR part 634. Each subpart in this part contains additional regulations specific to the named installation.

Subpart A—Fort Stewart, Georgia

§ 636.1 Responsibilities.

In addition to the responsibilities described in § 634.4 of this subchapter, Unit Commanders will:

(a) Monitor and control parking of military and privately owned vehicles within the unit's area, to include motor pools and assigned training areas.

(b) Establish a program in accordance with 24th Infantry Division (Mechanized) and Fort Stewart Regulation 755-2 to identify abandoned privately owned vehicles in the unit's area and coordinate with the Military Police for impoundment.

(c) In coordination with the Military Police, identify problem drivers in the unit and take appropriate action to improve their driving habits.

(d) Ensure that the contents of this part are explained to all newly assigned personnel, including personnel on temporary duty with their unit for 10 days or more.

(e) Identify unit member's vehicles which have obvious safety defects (see § 636.33) and take appropriate action to have the defect corrected. Commanders who cause a vehicle to be removed

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from the installation without the consent of the owner could be found liable for subsequent damage done to the vehicle provided that the damage was the result of negligence on the part of the government personnel.

(f) Identify those individuals required to attend the Defensive Driving Course (DDC) or Motorcycle Defensive Driving Course (MDDC) and ensure their attendance at the course.

§ 636.2 Program objectives.

In addition to the requirements of § 634.5 of this subchapter:

(a) The entry of motor vehicles on the Fort Stewart/Hunter Army Airfield reservation is permitted by the Commanding General under the conditions prescribed by this part. Upon entering the military reservation, the driver subjects himself and his vehicle to reasonable search. The authority to search vehicles on post is subject to the provisions of AR 190-22 and AR 210-10. This part is not applicable to vehicle safety inspections and spot checks conducted primarily for purposes of safety.

(b) The Military Police may:

(1) Inspect any vehicle operated on the reservation for mechanical condition.

(2) Impound, exclude, or remove from the reservation any vehicle used as an instrument in a crime, suspected of being stolen, abandoned, inoperable, unregistered, or being operated by a person under the influence of intoxicants or drugs. No vehicle will be impounded unless the impoundment meets the requirements of AR 190-5, paragraph 6-2 (32 CFR 634.50) and § 636.38 of this subpart. In the event a vehicle is impounded as an instrument of crime (particularly in the transport of illegal drugs or weapons), coordination will be made with the appropriate civilian law enforcement agencies.

(3) Subsequent to a lawful apprehension, seize for administrative forfeiture proceedings all conveyances which are used, or are intended to be used to transport, sell or receive, process or conceal illegal drugs or drug paraphernalia, or in any way facilitate the foregoing. A conveyance is defined as

any mobile object capable of transporting objects or people (e.g., automobile, truck, motorcycle, boat, airplane, etc.).

(c) The Commander or other persons designated authority by the Commander may suspend or revoke the installation driving privileges of any person as authorized by part 634 of this subchapter and this section.

(d) Unit commanders may request temporary suspension of an assigned member's installation driving privilege for cause (e.g., continued minor driving infractions, numerous parking violations, etc.). Such requests will be submitted in writing to the Commander, 24th Infantry Division (Mechanized) and Fort Stewart, ATTN: AFZP-PM, Fort Stewart, Georgia 31314-5000. Reasons for such requests will be explained. Unit commanders retain the authority to suspend a soldier's military vehicle driving privileges in accordance with AR 385-55.

§ 636.3 Suspension or revocation of driving privileges.

In addition to the requirements of § 634.10 of this subchapter:

(a) Administrative suspension or revocation of installation driving privileges applies to the operation of a motor vehicle on Fort Stewart/Hunter Army Airfield.

(b) Installation driving privileges will be suspended for up to 6 months for drivers who accumulate 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months.

(c) The Garrison Commander and Deputy Garrison Commander are designated as suspension/revocation authorities for:

(1) Suspension of driving privileges should the evidence indicate that a charge of driving under the influence is warranted or;

(2) The suspension/revocation for accumulation of 12 traffic points within 12 months or 18 points within 24 consecutive months.

§ 636.4 Administrative due process for suspensions and revocations.

In addition to the requirements of § 634.11(a) of this subchapter:

(a) The Provost Marshal or his designee will provide the written notice of

pending action and offer of an administrative hearing using AFZP Form Letter 316, Suspension of Installation Driving Privileges.

(b) The Garrison Commander and Deputy Garrison Commander are designated as reviewing authorities to conduct administrative hearings.

(c) Individuals who desire an administrative hearing to review a decision to impose immediate suspension, or to appeal the decision of the administrative hearing officer, will adhere to the following procedures. A request for an administrative hearing will be forwarded through their supervisory chain of command. Requests from family members or non-employee civilians can be forwarded to the Provost Marshal's Administrative Section at Fort Stewart or Hunter Army Airfield and can either be delivered or post marked within ten days of notification of the suspension action.

(d) Individuals who were initially charged with driving under the influence (DUI) based in part on a blood alcohol content (BAC) test which has not subsequently been invalidated and who are found not guilty of DUI may request a hearing to determine if their driving privileges should be restored. Such requests shall be forwarded through their chain of command to arrive at the Provost Marshal's Office (AFZP-PMA for Fort Stewart or AFZP-PM-H for Hunter Army Airfield) not later than ten working days after the date of court action.

§ 636.5 Army administrative actions against intoxicated drivers.

For this installation, in violation of State law referenced in § 634.12(a)(3) of this subchapter, means a blood alcohol content of 0.10 percent or higher as set forth in Official Code of Georgia Annotated 40-6-392(b)(3).

§ 636.6 Remedial driver training program.

For this installation remedial driving training program referenced in § 634.12(b) of this subchapter is operated by the Installation Safety Office. Driving privileges may be withheld beyond expiration of the sanction to complete remedial driving or alcohol and drug rehabilitation programs in accordance

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with AR 190-5, paragraphs 2-12c and d, and 5-4f (32 CFR 634.17(c) and (d) and 634.17(f)).

§ 636.7 Extensions of suspensions and revocations.

In addition to the requirements in § 634.17(a) of this subchapter, for each subsequent violation of the suspension period, an additional five years will be added to the suspension period for this installation (see Table 634.46 in § 634.46 of this subchapter).

§ 636.8 Registration policy.

In addition to the requirements of § 634.19(a) of this subchapter, motor vehicles which are owned and/or operated by a person who resides, performs duty, is employed on, or "frequently uses" the facilities of Hunter Army Airfield will be registered in accordance with the requirements of § 634.20 of this subchapter. Frequent users include but are not limited to family members, retirees, and civilians whose normal route of travel between home and work takes them through the installation.

§ 636.9 Registration requirement.

In addition to the requirements of § 634.20 of this subchapter:

(a) The Military Police will cite violators on DD Form 1408 (Warning Citation) for observed safety defects. On a periodic basis, Military Police will conduct vehicle safety inspection operations using the criteria in § 636.33.

(b) An individual possessing a valid USAREUR privately owned vehicle (POV) license may operate a motor vehicle in the State of Georgia for a period not to exceed 30 days. After the 30 day period the individual must obtain a valid license from the State of Georgia or another state to operate a motor vehicle in the State of Georgia.

(c) An individual returning a vehicle to Continental United States (CONUS) has 30 days from date of entry or 10 days after reporting for military duty to register that vehicle in the State of Georgia or another state. A temporary pass will be issued until this requirement has been met.

(d) *Liability and no-fault insurance requirements.* (1) All personnel operating vehicles on Fort Stewart/Hunter Army Airfield will obtain and maintain, at

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least, the minimum amount of liability and no-fault insurance required by the State of Georgia. The amounts are as follows:

(i) Liability:
(A) \$15,000.00 per person per accident for bodily injury.

(B) \$30,000.00 per incident for bodily injury.

(C) \$10,000.00 per accident for property damage.

(ii) No-Fault—\$5,000.00.

(2) Proof of this insurance will be required at the time of registration.

(e) Vehicle safety inspections are not required in the State of Georgia, however, vehicles operated on Fort Stewart/Hunter Army Airfield must be in safe operating condition and be able to pass spot vehicle safety equipment checks conducted by the Military Police. Safety criteria is set forth in § 636.33 of this subpart.

§ 636.10 Hunter Army Airfield vehicle registration.

Personnel assigned or employed at Hunter Army Airfield are required to register their privately owned vehicles within five days after arrival to the installation. Requirements for registration are listed in AR 190-5 and this part.

(a) Temporary passes may be issued to personnel not assigned to the installation but requiring temporary access to the installation. These include personnel employed by construction and material handling vehicles requiring on post access. Personnel requesting temporary passes must meet the same requirements as do personnel requiring decals.

(1) Temporary passes will not exceed 45 days. Renewal of temporary passes is prohibited except upon approval of the Installation Commander or his/her designee.

(2) Temporary passes will be conspicuously placed on the left side of the vehicle dashboard between the dashboard and the front windshield. Nothing will be placed so as to obscure the view of the temporary pass from the exterior of the vehicle. The pass will remain in this position during the entire time the vehicle is on the installation. Failure to conspicuously display the temporary pass could result in the

vehicle being removed from the installation.

(3) Temporary passes will remain with the vehicle for which they were issued and not be transferred to other vehicles.

(4) Each person driving a vehicle on the installation must individually meet the drivers license requirement of the installation as well as sign the temporary pass.

(5) Temporary passes will be returned to the Vehicle Registration section when they have expired or area no longer needed.

(b) Decals are to be issued to all military and civilian employees of Hunter Army Airfield, military retirees, and contractors/vendors doing extended business on the installations. Requirements outlined in AR 190-5 (32 CFR part 634) and this part must be met before decals are issued.

(c) Personnel requiring permanent decals, who do not meet the requirements outlined in AR 190-5 (32 CFR part 634) and this part, will be issued temporary passes not to exceed 45 days. Registration requirements will be met as soon as possible after issuance of the temporary pass. A decal may then be issued.

(d) DOD decals (DD Form 2220) will be utilized for vehicle registration. Additional installation name and expiration month and year decals will be utilized with sizes and coloration as prescribed in AR 190-5 (32 CFR part 634).

(e) Decals will be permanently affixed to the vehicles for which they are registered in one of two places:

(1) Exterior, front windshield lower left corner.

(2) Front, left bumper of the vehicle, conspicuously displayed. Decals will not be affixed to the front spoilers or any other area which obscures the viewing of the decal.

(3) Installation decals will be placed directly beneath and centered on the DOD decal. Expiration decals will be placed on each side and level with the DOD decal with the month on the left and the year on the right.

(4) Decals will not be affixed to any other portion of the vehicle other than listed in §636.10(e) (1) through (3).

§ 636.11 Installation traffic codes

In addition to the requirements in §634.25(d) of this subchapter, on-post violations offenders will be cited under the appropriate Georgia Traffic Code as assimilated by 18 U.S.C. 13 (for civilians) and Art 134c, Uniform Code of Military Justice (UCMJ) (for military). If no Georgia Code is appropriate for a specific offense, civilians will be cited under 40 U.S.C. 318a and military personnel will be cited under Art 92, UCMJ. The Fort Stewart/Hunter Army Airfield installation traffic code conforms to the State of Georgia Traffic Law.

§ 636.12 Traffic accident investigation.

In addition to the requirements in §634.28 of this subchapter, Military Police at Fort Stewart/Hunter Army Airfield installation will investigate reportable motor vehicle accidents involving government owned or privately owned vehicles.

§ 636.13 Traffic accident investigation reports.

In addition to the requirements in §634.29 of this subchapter:

(a) Military Police at Fort Stewart/Hunter Army Airfield installations will record traffic accident investigations on DA Form 3946 (Military Police Traffic Accident Report) and DA Form 3975 (Military Police Report).

(b) All privately owned motor vehicle accidents on Fort Stewart or Hunter Army Airfield will be immediately reported to the Military Police for investigation. Unless an emergency situation exists, vehicle(s) involved in an accident will only be moved on order of the Military Police.

§ 636.14 Parking.

In addition to the requirements in §634.31 of this subchapter:

(a) Military Police will enforce parking in handicapped and Commanding General reserved parking spaces at Fort Stewart/Hunter Army Airfield soldier service facilities and assess points in accordance with Table 634.46 in §634.46 of this subchapter and Table 636.19 in §636.19. Vehicles may be towed for such violations as parking in handicapped parking spaces and parking on a yellow curb among others.

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(b) Reserved parking spaces in areas under the control of units or staff sections may be designated by the commander or staff section chief who is also responsible to control the use of these spaces.

(c) Parking spaces for tactical vehicles at the Main Exchange/Commissary area will be designated at the end of rows, farthest from the facilities. Only those vehicles properly authorized by unit commanders will be parked at the Main Exchange/Commissary area.

§ 636.15 Traffic violation reports.

In addition to the requirements in § 634.32 of this subchapter:

(a) The Provost Marshal in coordination with the Staff Judge Advocate will determine what traffic offenses will be referred to the U.S. Magistrate Court by means of DD Form 1805.

(b) Of the four available actions on the back of the DD Form 1408, supervisors of civilian employees may take one of the following two actions.

(c) No action taken: A finding of guilty. There must be an explanation of the reason for no action taken.

(d) Administration: A finding of guilty. This includes, but is not limited to, such actions as a written warning, letter of reprimand, or suspension. Supervisors should coordinate with CPO, MER branch before taking adverse action.

(e) Reports of Commander's action taken will be forwarded to the Provost Marshal Office through the appropriate major subordinate commander.

§ 636.16 Detection, apprehension, and testing of intoxicated drivers.

In addition to the requirements in § 634.36 of this subchapter, the standard field sobriety test used by the Military Police may include the following tests:

- (a) Horizontal gaze nystagmus.
(b) Walk and turn.
(c) One leg stand.

§ 636.17 Compliance with State laws.

In addition to the requirements of § 634.42 of this subchapter, the Provost Marshal will conduct necessary coordination with civil enforcement agencies to ensure receipt of information and assistance as required. The Directorate of Logistics will secure any necessary

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permits for military movement on public roads and highways.

§ 636.18 Driving records.

In addition to the requirements in § 634.44 of this subchapter, the Provost Marshal Office will maintain driver records.

§ 636.19 Point system application.

TABLE 636.19

Table with 2 columns: Violation description and Points assessed. Includes rows for parking in handicap zone, against yellow curb, near fire hydrant, impeding traffic flow, and other parking violations.

§ 636.20 Point system procedures.

In addition to the requirements of § 634.47 of this subchapter:

(a) Reports of parking violations recorded on DD Form 1408 or DD Form 1805 will serve as a basis for determining point assessment.

(b) The instructions in paragraph (a) of this section also apply to the receipt of a DD Form 1408 (Armed Forces Traffic Ticket) for a parking violation.

§ 636.21 Obedience to official traffic control devices.

(a) All drivers will obey the instructions of official signs, unless directed to do otherwise by the Military Police.

(b) Official traffic control devices, such as traffic cones or barricades, are presumed to have been placed by proper authority.

§ 636.22 Speed regulations.

(a) Georgia state speed limits apply unless otherwise specified by this part.

(b) Drivers will operate their vehicles at a reasonable and prudent speed based on traffic and road conditions, regardless of posted speed limits.

(c) The speed limit on the installation is 30 miles per hour unless otherwise posted or if it falls within one of the special speed limit situations (see paragraph (d) of this section).

(d) The following special speed limits apply:

- (1) When passing troop formations, 10 miles per hour.

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(2) The authorized speed limit in the school zones is 15 miles per hour when any of the following conditions are present:

- (i) A school crossing attendant is present.
- (ii) Children are present in the area.
- (iii) The flashing, yellow, caution lights are in operation.

(3) Fort Stewart housing areas, 20 miles per hour. Hunter Army Airfield housing areas, 15 miles per hour.

(4) Tactical vehicle drivers will obey posted speed limits; however, drivers will not exceed 40 miles per hour on paved roads and 25 miles per hour on unpaved roads and tank trails. Commercial Utility Cargo Vehicles (CUCV's) are tactical vehicles and will obey the following off-road driving speeds:

- Day Driving:
 - Trails, 16 MPH
 - Cross County, 6 MPH
- Night Driving:
 - Trails, 5 MPH (with headlights)
 - Cross Country, 5 MPH
- Night Driving:
 - Trails, 4 MPH (Black-out Drive)
 - Cross County, 2.5 MPH

(5) Parking lots, 10 miles per hour.

(6) The authorized maximum speed limit for rough terrain forklifts when operated on hard surface roads will not exceed 15 miles per hour. These vehicles will also bear the Triangular Symbol to alert trailing vehicles as required by the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.145).

§ 636.23 Turning movements.

- (a) U-turns are prohibited on all streets in the cantonment area.
- (b) Right-turns will be made from a position as close to the right edge or right curb of the roadway as possible.
- (c) Left-turns will be made from a position as close to the center line as possible or from a left turn lane, if available.
- (d) All turns will be signaled continuously beginning not less than 100 feet prior to the turn.

§ 636.24 Driving on right side of roadway; use of roadway.

(a) All drivers will use the right side of roadways, except:

(1) When passing a vehicle proceeding in the same direction.

(2) When an obstruction is blocking all or part of the right lane of the roadway.

(3) When driving on a one-way street.

(b) Drivers proceeding in opposite directions will pass to the right, each using one-half of the roadway.

(c) Drivers passing another vehicle traveling in the same direction will exercise the utmost caution and safety and will abide by all applicable traffic laws.

(d) Drivers of vehicles being passed will give way to the right and not increase their vehicle's speed.

(e) Drivers will allow a sufficient distance between their vehicle and the vehicle in front to allow a safe stop under all conditions.

§ 636.25 Right-of-way.

(a) When two vehicles enter an intersection from different highways at the same time, the driver of the vehicle on the left will yield right-of-way. When entering an intersection without traffic control devices from a highway which terminates at the intersection, that driver will yield right-of-way.

(b) Drivers turning left within an intersection will yield right-of-way to vehicles approaching from the opposite direction.

(c) Drivers approaching a stop sign will stop at the marked stop line, if present, or before entering the crosswalk, if present, or at a point nearest the intersecting roadway where the driver will yield the right-of-way, if required.

(d) Drivers approaching yield signs will slow down to a speed not exceeding 10 miles per hour and yield the right-of-way to any approaching vehicles, coming to a stop if necessary.

(e) Drivers entering or crossing a roadway from any place other than another roadway will yield the right-of-way to vehicles on the roadway.

(f) Upon the immediate approach of an authorized emergency vehicle identified as such, all drivers will yield the right-of-way to the emergency vehicle.

§ 636.26 Pedestrian's rights and duties.

(a) Pedestrians will obey all traffic control devices and regulations, unless

directed to do otherwise by the Military Police.

(b) When traffic-control signals are not in place or not in operation, the driver of a vehicle will yield the right of way, by slowing down or stopping, when a pedestrian is in a crosswalk on the same side of the road as the driver's vehicle, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(c) Pedestrians will not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close to the crosswalk that it is impractical for the driver to stop.

(d) Pedestrians crossing a roadway, at a point other than a crosswalk, will yield the right-of-way.

(e) Pedestrians will not cross any intersection diagonally unless clearly authorized to do so.

(f) Every driver will exercise due care to avoid colliding with any pedestrian upon any roadway and will exercise proper precaution upon observing any child or any obviously confused, incapacitated, or intoxicated person.

(g) A person who is under the influence of intoxicating liquor or any drug to a degree which renders himself a hazard will not walk upon any roadway.

(h) Pedestrians will use sidewalks, where provided, rather than walking upon the roadway. When sidewalks are not provided, pedestrians will walk the shoulder of the roadway as far from the edge of the roadway as possible. When neither sidewalks nor a shoulder are available, pedestrians will walk on the extreme edge of the roadway, facing traffic, and will yield to all oncoming traffic.

(i) Individuals will not stand in or beside the roadway to solicit rides (hitchhike).

(j) Individuals will not stand in or beside the roadway to solicit business, employment, or contributions from the occupant of any vehicle.

(k) Pedestrians will yield to all authorized emergency vehicles using an audible signal and/or a visual signal.

(l) The wearing of headphones or earphones by pedestrians or joggers while walking or jogging on roadways or on

the shoulders of roadways is prohibited.

§ 636.27 Regulations for bicycles.

(a) Parents will not knowingly allow their children to violate any of the provisions of this section.

(b) Traffic laws and regulations in this part apply to persons riding bicycles. Bicycle riders are granted all the rights and are subject to all duties of motorized vehicle operators, except those which logically do not apply.

(c) Bicycles will be parked against the curb or in a rack, provided for that purpose, and will be secured.

(d) Bicycle riders will not attach the bicycle or themselves to any motorized vehicle operating upon the roadway.

(e) Bicycles will be ridden upon the roadway in single-file.

(f) Bicycles operated between dusk and dawn will utilize a headlight visible for a minimum of 300 feet and a rear reflector or red light visible for 300 feet to the rear.

(g) Bicycles will not be ridden without an operable brake system.

(h) Bicycles will not be ridden if the pedal, in its lowermost position, is more than 12 inches above the ground.

(i) If a bicycle/pedestrian path or sidewalk is present, bicyclists will use the path or sidewalk instead of the roadway.

(j) Certain roadways have been designated and marked as being off-limits to bicyclists. Bicyclists will use an alternate roadway or a bicycle path rather than those roadways.

§ 636.28 Special rules for motorcycles/mopeds.

(a) Traffic laws and regulations in this part apply to persons riding motorcycles/mopeds. Motorcycle/moped operators are granted all the rights and are subject to all duties of motor vehicle operators, except those which logically do not apply.

(b) Motorcycles/moped operators will ride only while seated facing forward with one leg on either side of the vehicle on the permanent and regular seat of the vehicle. Passengers will not be carried unless the vehicle is designed to carry a passenger. Passengers will only be carried in a manner which neither interferes with the operation of

the vehicle nor obstructs the operator's view. Operators will keep both hands on the vehicle's handlebars.

(c) Motorcycle/moped operators are entitled to the use of a full lane of traffic. Motorcycle/moped operators will not pass another vehicle using the same lane as the overtaken vehicle. Motorcycles/mopeds will not be operated between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Motorcycles/moped headlights and tail lights will be illuminated at anytime the vehicle is being operated.

(e) Motorcycle/moped operators will not attach their vehicle or themselves to any other motorized vehicle operating upon the roadway.

(f) Footrests will be provided for passengers. Motorcycles/mopeds will not be operated with handlebars more than 15 inches above the seat which the operator occupies. No back rest attached to the motorcycle/moped will have a sharp point at its apex.

(g) All motorcycle/moped operators/passengers will comply with the following safety requirements:

(1) Wear the following protective equipment:

(i) Properly fastened (under the chin) DOT approved helmet.

(ii) Eye protection (clear goggles or a face shield attached to the helmet).

(iii) Full-fingered gloves.

(iv) Long trousers.

(v) Long-sleeved shirt or jacket (with sleeves rolled down).

(vi) Leather boots or over-the-ankle shoes.

(vii) High-visibility garments (bright color for day and retro-reflective for night).

(2) Motorcycle/moped headlights will be turned on at all times.

(3) Motorcycle/moped must have two rear-view mirrors (one mirror on each side of the handlebars).

(4) Use of headphones or earphones while driving is prohibited.

(h) Military personnel, civilian employees, and family member drivers of a privately or government-owned motorcycle/moped (two or three wheeled motor driven vehicles) are required to attend and complete an approved Motorcycle Defense Driving Course (MDDC) prior to operation of the mo-

torcycle/moped on the installation. Upon completion of the course, personnel will be provided with a MDDC card. Personnel are authorized to operate their motorcycle/moped on the installation for the purpose of attending the motorcycle safety course. Attendance may be verified by contacting the Installation Safety Office.

§ 636.29 Go-carts, minibikes, and all terrain vehicles (ATV's).

(a) Operators of "go-carts," "minibikes," and ATV's 16 years of age or older, must comply with applicable Georgia State Law and Fort Stewart traffic laws and regulations contained in this part.

(b) "Go-carts," "minibikes," and ATV's operated on installation roadways are required to meet the requirements of this part and the Georgia Traffic Code.

(c) Off-road vehicles will only be operated in areas specified by the DPCA. The DPCA will specify conditions for off-road operation.

(d) "Go-carts," "minibikes," and ATV's will only be operated during daylight hours and will not be operated during periods of inclement weather or reduced visibility.

(e) Operators and passengers of "go-carts," "minibikes," and ATV's must wear approved protective helmets, eye protection, and footwear (open-toed footwear is prohibited).

(f) Soldiers or sponsors of persons operating "go-carts," "minibikes," and ATV's are responsible for the safe operation of the vehicle.

§ 636.30 Stopping, standing and parking.

(a) Drivers will not stop, park, or leave standing their vehicle, whether attended or unattended, upon the roadway when it is possible to stop, park or leave their vehicle off the roadway. In any case, parking or standing the vehicle upon the roadway will only be done in an emergency.

(b) Vehicles, not clearly identified as operated by a handicapped individual, will not be parked in a handicapped parking space.

(c) Whenever Military Police find a vehicle parked or stopped in violation of this section, they may immediately

move, or cause to be moved, the vehicle off the roadway. At the direction of the Provost Marshall, or his designee, vehicles parked in restricted or reserved parking spaces, may be moved.

(d) The Military Police may remove or cause to be removed, to a safe place, any unattended vehicle illegally left standing upon any highway or bridge or within 10 feet of any railroad track on the installation.

(e) As a crime prevention measure, the Military Police may pick up keys left in vehicles, secure the vehicle in place, and post a notice directing the owner to proceed to the MP station to claim his/her keys. The program will be adequately publicized and will only be invoked after a conscientious attempt to locate the owner.

(f) No driver will stop, stand, or park a vehicle:

(1) On the roadway side of any vehicle stopped or parked at the edge of a curb or a street.

(2) On a sidewalk.

(3) Within an intersection.

(4) On a crosswalk.

(5) Alongside or opposite any street excavation or obstruction when traffic would be obstructed.

(6) Upon a bridge or other elevated structure.

(7) On any railroad tracks or within 10 feet of any rail road track.

(8) On any controlled-access highway.

(9) Where prohibited by official signs.

(10) Alongside any roadway in any manner which obstructs traffic.

(g) No driver will stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(1) In front of a public or private driveway.

(2) Within 10 feet of a fire hydrant.

(3) Within 20 feet of a crosswalk at an intersection.

(4) Within 20 feet upon the approach to any flashing signal, a stop sign, yield sign, or traffic control signal located at the side of a roadway.

(5) Within 20 feet of a driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance (when properly sign posted).

(6) At any place where official signs prohibit standing.

(7) Adjacent to any curb painted yellow or identified, by signs, as a "No Parking" area.

(8) Along a roadway against the flow of traffic.

(9) Within 20 feet of any building in what would reasonably be considered a "fire-lane" unless specified as a parking space.

(10) Parallel parking along the curb is authorized in housing areas unless otherwise posted.

(11) Parking is prohibited upon lawns or grassed (seeded) areas, unless specifically authorized by the Provost Marshal. This prohibition is not intended, however, to extend to those locations designated as bivouac sites, range areas, etc.

(12) No dual-wheeled or tandem-wheeled recreational vehicles and trailers will be stored at government quarters. All other recreational vehicles, to include campers, trailers, boats, pop-up campers, and camper shells may be parked in the driveway area or under the carport of individual quarters. To prevent injury to children playing on and around trailers, one tire on each side of the trailer will be chocked in front and back. Trailer tongues, without installed supports, will either be left on the ground or supported in such a manner as to preclude the support tipping over and allowing the trailer tongue to fall. If the vehicle creates a safety hazard or is an eyesore, personnel are encouraged to use the storage facilities available at the Outdoor Recreation Center, Holbrook Pond, Fort Stewart, or at the Private Vehicle Storage area at Hunter Army Airfield. House trailers are not authorized to be parked in the quarters area. Campers, camper trailers, and tents will not be approved for occupancy in the quarters area. Parking of recreational vehicles on the street will be limited to 24 hours for owners to load and unload the vehicle at the owner's quarters.

(h) No driver will use a parking lot, sidewalk, fire lane, or vacant property to drive on in order to avoid a traffic control device or alter the traffic flow plan unless authorized to do so by the Military Police or a traffic control device.

§ 636.31 Abandoned vehicles.

(a) Any MP or DOD police officer who finds or has knowledge of a motor vehicle which has been left unattended or abandoned on a street, road, highway, parking lot, or any other real property of the installation for a period of at least 72 hours may be authorized by the Provost Marshal or his designee to cause said motor vehicle to be moved to an impoundment lot for storage.

(b) Any MP or DOD police officer who, under the provisions of this section, causes any motor vehicle to be moved to an impoundment lot or other temporary place of safety is acting with proper authority and within the scope of that officer's employment, except that any wanton or intentional damage done to any motor vehicle by any MP or DOD police officer should not be within the scope of either that officer's authority or employment.

(c) Unit commanders, with knowledge of an abandoned vehicle in their unit area, should attempt to identify the owner and have them remove the vehicle. When owners cannot be identified or are no longer assigned to this command, unit commanders will notify the MP's to initiate impoundment procedures.

(d) Civilian vehicles left abandoned on the reservation will be towed to an impoundment lot for further disposition.

(e) Personnel experiencing motor vehicle trouble may authorize the MP desk to obtain the assistance of a civilian wrecker, but in doing so, the government assumes no liability of payment for such services or possible resulting damage.

§ 636.32 Miscellaneous instructions.

(a) All unattended motor vehicles will have the engine stopped and the ignition locked.

(b) Vehicles will not be operated when so loaded with passengers and/or goods that the driver's view is blocked or control over the driving mechanism is interfered with.

(c) Drivers, other than on official business, will not follow any emergency vehicle, operating under emergency conditions, closer than 500 feet or park closer than 500 feet to any

emergency vehicle stopped for an emergency.

(d) No vehicle will be driven over a fire hose unless directed to do so by a fire official, or the Military Police.

(e) Ground guides will be posted, during backing, at the left rear of any ¾ ton or larger vehicle.

(f) All vehicles carrying a load will have the load secured and/or covered to prevent the load from blowing or bouncing off the vehicle.

(g) A red flag or red light, visible for at least 100 feet from the rear will be attached to any load protruding beyond the rear of any vehicle.

(h) Troop marches, physical training runs, etc., will not be conducted in a manner that will interfere with motor vehicle traffic on the Fort Stewart/Hunter Army Airfield reservation.

(1) Units participating in parades and related practices, road marches, etc., will not conduct such marches upon any hard surface road or traffic way unless coordination has been made with the Provost Marshal Office.

(2) Physical training runs, exercises, or tests will not be conducted upon any hard surface road or traffic way unless such is specifically allowed in 24th Infantry Division (Mechanized) and Fort Stewart Regulation 350-1.

(i) Congested housing areas on the installation require special precaution on the part of drivers and persons living in those areas.

(1) Parents can assist drivers in this regard by reminding their children that housing area streets are extremely dangerous and that playing in the street is prohibited.

(2) Bus stops are sites particularly prone to large numbers of children playing immediately adjacent to or actually in the roadway while awaiting arrival of the school bus.

(3) Complaints received by the MP desk, concerning children playing in the streets, must be investigated in the interest of safety. Repeated violations could result in further action by the chain of command.

(j) Vehicles and/or trailers will not be towed with a chain or rope (vehicles may be towed by another privately owned vehicle by use of a rigid tow bar).

(k) At entrances to Fort Stewart/Hunter Army Airfield where a gate guard is positioned, drivers are required to obey his/her instructions. During hours of darkness, headlights will be switched to parking lights upon approach to the gate.

(l) Motorists will drive with headlights illuminated at any time from a half hour after sunset to a half hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead.

(m) Motor vehicles will not be operated if visibility to the front, rear, or side is rendered unsafe and improper from fogged or iced-over windows.

(n) Aircraft runways, taxiways, and aprons at Hunter Army Airfield and Wright Army Airfield and "OFF-LIMITS" to all privately owned vehicles.

(o) Extensive repairs to automobiles will not be undertaken in housing areas, parking lots, or other similar areas. Repairs extending over a 24 hour period will be considered extensive.

(p) Tactical vehicles will not be driven in housing areas. Post police or vehicles on similar details may drive in the housing areas as required.

(q) Active duty personnel residing on post are encouraged to have their privately owned bicycles, "go-carts," and "minibikes" registered with the Provost Marshal's Office (Registration Branch) in conjunction with the Installation Crime Prevention Program.

(r) All personnel operating a vehicle on Fort Stewart/Hunter Army Airfield will have proof of insurance for the vehicle, in the vehicle at all times.

§ 636.33 Vehicle safety inspection criteria.

(a) The vehicle safety inspection criteria listed in this paragraph (a) are general in nature; specific evaluation techniques for these criteria are contained in Georgia Traffic Law.

(1) Headlights—every vehicle, except motorcycles, will have at least two headlights, one on each side of the front of the vehicle, capable of illuminating 500 feet to the front. Motorcycles will have one headlight.

(2) Tail Lamps—every vehicle will have at least one red, self-illuminating lamp, on the rear of the vehicle, visible from 500 feet to the rear.

(3) Registration Plate Lamp—every vehicle will have a lamp designed to illuminate the registration plate with white light making the plate legible from a distance of 50 feet.

(4) Rear Reflectors—every vehicle, except motorcycles, will have two red reflectors on the rear. Motorcycles will have one red reflector.

(5) Stop Lamp—every vehicle will have at least one red or yellow stop lamp on the rear which will be actuated upon application of the foot brake.

(6) Turn Signals—every vehicle will be equipped with electrical or mechanical turn signals capable of indicating any intention to turn either to the right or to the left, and visible from the front and rear. This requirement does not apply to any motorcycle or motor-driven cycle manufactured prior to 1 January 1972.

(7) Brakes—every vehicle will be equipped with brakes adequate to control the movement of and to stop and hold such vehicle.

(8) Horn—every vehicle will be equipped with an operable horn, capable of emitting sound audible for at least 200 feet.

(9) Muffler—every vehicle will have a muffler in good working order and in constant operation.

(10) Mirror—every vehicle, from which the driver's view is obstructed, will be equipped with a mirror reflecting a view of the highway for a distance of at least 200 feet to the rear.

(11) Windows—the view through vehicle windows will not be obstructed by any sign, poster, or other nontransparent material. Windshields and rear windows will not have starburst or spider webbing effect greater than 3 inches by 3 inches. No opaque or solid material including, but not limited to cardboard, plastic, or taped glass will be employed in lieu of glass.

(12) Windshield Wipers—every vehicle, except motorcycles, will be equipped with operable windshield wipers.

(13) Tires—every vehicle will be equipped with serviceable rubber tires

which will have a tread depth of at least two thirty-seconds of an inch.

(14) Suspension Systems—no vehicle will have its rear end elevated above the vehicle manufacturer's designated height (49 CFR 570.8).

(b) The criteria listed in paragraph (a) of this section are not necessarily an inclusive list. A vehicle may be deemed unsafe to operate when any part of the vehicle is defective and renders the vehicle dangerous to others.

§ 636.34 Restraint systems.

(a) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installations.

(b) Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a private owned vehicle on the Fort Stewart/Hunter Army Airfield installations.

(c) Restraint systems will be worn by all soldiers and Reserve Component members on active Federal service driving or riding in a private owned vehicle whether on or off the installations.

(d) Infant/child restraint devices (car seats) are required in private owned vehicles for children 4 years old or under and not exceeding 45 pounds in weight.

(e) Restraint systems are required only in cars manufactured after model year 1966.

(f) The operator of a vehicle is responsible for ensuring the use of seat belts, shoulder restraints, and child restraining systems when applicable and may be cited for failure to comply (40 U.S.C. 318a).

(g) Passengers (over the age of 16) are responsible for ensuring that their seat belts/shoulder restraints are used when applicable and may be cited for failure to comply (40 U.S.C. 318a).

§ 636.35 Headphones and earphones.

The wearing of headphones or earphones is prohibited while driving a U.S. Government vehicle, POV, motorcycle, or other self-propelled two-wheel, three-wheel, or four-wheel vehi-

cle powered by a motorcycle type engine. This does not negate the requirement for wearing hearing protection when conditions or good judgment dictate use of such protection.

§ 636.36 Alcoholic beverages.

(a) Consuming alcoholic beverages as an operator or passenger in or on U.S. Government or privately owned vehicles is prohibited.

(b) Consuming alcoholic beverages on any roadway, parking lot, or where otherwise posted is prohibited.

(c) Having open containers of alcoholic beverages in vehicles or areas not designated for the consumption of alcohol is prohibited.

§ 636.37 Use of "Denver Boot" device.

The "Denver Boot" device will be used by Military Police as an additional technique to assist in the enforcement of parking violations when other reasonably effective but less restrictive means of enforcement (such as warnings, ticketing, reprimands, suspensions, or revocations of on-post driving privileges) have failed, or immobilization of the private owned vehicle is necessary for safety.

(a) The use of booting devices will be limited to application by the Military Police under the following conditions:

(1) Immobilization of unsafe, uninspected, or unregistered vehicles.

(2) Immobilization of vehicles involved in criminal activity.

(3) For repeat offenders of the parking violations outlined in this supplement. Three or more parking violations within 6 months constitutes grounds to boot the vehicle.

(4) At the discretion of the Provost Marshal or his designee, on a case-by-case basis.

(b) Booted vehicle will be marked, for driver notification, by placing an orange in color notice on the vehicle windshield. The notice will contain information on why the vehicle was booted and instructions on how to have the booting device properly removed by the Military Police (see figure 636.37).

FIGURE 636.37. DRIVER BOOTING DEVICE
NOTICE

1. Your vehicle is illegally parked and has been secured in place by the Military Police with a vehicle restraining device. Do not move this vehicle until the restraining device is properly removed by the Military Police.
2. Any movement, or attempted movement, of this vehicle could result in damage to the device and the vehicle. You will be responsible for any such damage to the vehicle and/or the restraining device.
3. Any removal, or attempted removal, of the device could result in you being charged with a criminal offense.
4. To have this device properly removed by the Military Police, contact the following:

Mon-Fri, 7: a.m.-5: p.m., Bldg 292,

Phone 767-2848/8659

Non-Duty Hours, Bldg 285, Phone 767-2822

Notice

§ 636.38 Impounding privately owned vehicles (POVs).

This section provides the standards and procedures for towing, inventorying, searching, impounding, and disposing of private owned vehicles.

(a) *Implied consent to vehicle impoundment.* Any person granted the privilege of operating a motor vehicle on the Fort Stewart/Hunter Army Airfield installations shall be deemed to have given his or her consent for the removal and temporary impoundment of the privately owned vehicle when it is parked illegally for unreasonable periods, interfering with operations, creating a safety hazard, disabled by accident, left unattended in a restricted or controlled area, or abandoned. Such vehicles will be towed by a contracted civilian wrecker service and placed in that service's storage lot. Such persons further agree to reimburse the civilian wrecker service for the cost of towing and storage should their vehicle be removed or impounded.

(b) *Standards of impoundment.* (1) Privately owned vehicles will not be impounded unless they clearly interfere with ongoing operations or movement of traffic, threaten public safety or convenience, are involved in criminal activity, contain evidence of criminal activity, or are stolen or abandoned.

(2) The impoundment of a privately owned vehicle is inappropriate when reasonable alternatives to impoundment exist.

(i) An attempt will be made to locate the owner of the privately owned vehicle and have the vehicle removed.

(ii) The vehicle may be moved a short distance to a legal parking area and temporarily secured until the owner is located.

(iii) Another responsible person may be allowed to drive or tow the privately owned vehicle with permission from the owner, operator, or person empowered to control the vehicle. In this case, the owner, operator, or person empowered to control the vehicle will be informed that the Military Police are not responsible for safeguarding the privately owned vehicle.

(3) Impounding of privately owned vehicle is justified when any of the following conditions exist:

(i) The privately owned vehicle is illegally parked—

(A) On a street or bridge, or is double parking and interferes with the orderly flow of traffic.

(B) On a sidewalk, within an intersection, or a cross-walk, on a railroad track, in a fire lane, or is blocking a driveway, so that the vehicle interferes with the operations or creates a safety hazard to other roadway users or the general public. An example would be a vehicle parked within 15 feet of a fire hydrant or blocking a properly marked driveway of a fire station or aircraft-alert crew facility.

(C) When blocking an emergency exit door of any public place (installation theater, club, dining facility, hospital, or other facility).

(D) In a "tow-away" zone that is so marked with proper signs.

(ii) The privately owned vehicle interferes with—

(A) Street cleaning operations and attempts to contact the owner have been unsuccessful.

(B) Emergency operations during a natural disaster or fire or must be removed from the disaster area during cleanup operations.

(iii) The privately owned vehicle has been used in a crime or contains evidence of criminal activity.

(iv) The owner or person in charge has been apprehended and is unable or unwilling to arrange for custody or removal.

(v) The privately owned vehicle is mechanically defective and is a menace to others using the public roadways.

(vi) The privately owned vehicle is disabled by a traffic incident and the operator is either unavailable or physically incapable of having the vehicle towed to a place of safety for storage or safekeeping.

(vii) Military Police reasonably believe the vehicle is abandoned.

(c) *Towing and storage.* (1) Impounded privately owned vehicles will be towed and stored by a contracted wrecker service.

(2) An approved impoundment area belonging to the contracted worker service will be used for the storage of impounded vehicles. This area will assure adequate accountability and security of towed vehicles. One set of keys to the enclosed area will be maintained by the Military Police.

(3) Temporary impoundment and towing of privately owned vehicles for violations of this supplement or involvement in criminal activities will be accomplished under the direct supervision of the Military Police.

(d) *Procedure for impoundment.* (1) Unattended privately owned vehicles.

(i) DD Form 2504 (Abandoned Vehicle Notice) will be conspicuously placed on privately owned vehicles considered unattended. This action will be documented by an entry in the Military Police desk journal.

(ii) The owner will be allowed three days from the date the privately owned vehicle is tagged to remove the vehicle before impoundment action is initiated. If the vehicle has not been removed after three days, it will be removed by a contracted civilian wrecker service. A DD Form 2505 (Abandoned Vehicle Removal Authorization) will be completed and issued to the contractor by the Military Police.

(iii) After the vehicle has been removed, the Military Police will complete DD Form 2506 (Vehicle Impoundment Report) as a record of the actions taken.

(A) An inventory listing personal property will be done to protect the

owner, Military Police, the Contractor, and the Commander.

(B) The contents of a closed container such as a suitcase inside the vehicle need not be inventoried. Such articles should be opened only if necessary to identify the owner of the vehicle or if the container might contain explosives or otherwise present a danger to the public. Merely listing the container and sealing it with security tape will suffice.

(C) Personal property will be placed in the Military Police found property room for safe keeping.

(iv) DD Form 2507 (Notice of Vehicle Impoundment) will be forwarded by certified mail to the address of the last known owner of the vehicle to advise the owner of the impoundment action, and request information concerning the owner's intentions pertaining to the disposition of the vehicle.

(2) *Stolen privately owned vehicles or vehicles involved in criminal activity.* (i) When the privately owned vehicle is to be held for evidentiary purposes, the vehicle will remain in the custody of the Military Police or CID until law enforcement purposes are served.

(ii) Recovered stolen privately owned vehicles will be released to the registered owner, unless held for evidentiary purposes, or to the law enforcement agency reporting the vehicle stolen.

(iii) A privately owned vehicle held on request of other authorities will be retained in the custody of the Military Police or CID until the vehicle can be released to such authorities.

(e) *Search incident to impoundment based on criminal activity.* Search of a privately owned vehicle in conjunction with impoundment based on criminal activity will likely occur in one of the following general situations:

(1) The owner or operator is not present. This situation could arise during traffic and crime-related impoundments and abandoned vehicle seizures. A property search related to an investigation of criminal activity should not be conducted without search authority unless the item to be seized is in plain view or is readily discernible on the outside as evidence of criminal activity. When in doubt, proper search authority should be sought, during duty

hours, through the Chief, Criminal Law Branch of the Office of Staff Judge Advocate and after duty hours from the Duty Judge Advocate, before searching.

(2) The owner or operator is present. This situation can occur during either a traffic or criminal incident, or if the operator is apprehended for a crime or serious traffic violation and sufficient probable cause exists to seize the vehicle. This situation could also arise during cases of intoxicated driving or traffic accidents in which the operator is present but incapacitated or otherwise unable to make adequate arrangements to safeguard the vehicle. If danger exists to the Military Police or public or if there is risk of loss or destruction of evidence, an investigative type search of the vehicle may be conducted without search authority.

(f) *Disposition of vehicles after impoundment.* (1) If a privately owned vehicle is impounded for evidentiary purposes, the vehicle can be held for as long as the evidentiary or law enforcement purpose exists. The vehicle must then be returned to the owner without delay unless directed otherwise by competent authority.

(2) If the vehicle is unclaimed after 45 days from the date notification was mailed to the last known owner or the owner released the vehicle by properly completing DD Form 2505, the vehicle will be disposed of by one of the following procedures:

(i) Release to the lienholder, if known.

(ii) Processed as abandoned property in accordance with DOD 4160.21-M.

APPENDIX A TO PART 636—REFERENCES

Publications and forms referenced in this part may be viewed at the Office of the Provost Marshall on any major Army installation or may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

In addition to the related publications listed in appendix A to part 634 of this subchapter, the following publications provide a source of additional information:

FS Reg 190-7, Emergency Vehicle Operation
 FS Reg 350-1, Active Component Training
 FS Reg 385-14, Post Range Regulation
 FS Reg 755-2, Lost, Abandoned, or Unclaimed Privately Owned Personal Property

In addition to the prescribed forms used in appendix A to part 634 of this subchapter, the following forms should be used:

AFZP Form Letter 316, Suspension of Driving Privileges
 DA Form 3946, Military Police Traffic Accident Report
 DA Form 3975, Military Police Report
 DD Form 1920, Alcohol Influence Report
 DD Form 2220, DOD Registered Vehicle
 DD Form 2504, Abandoned Vehicle Notice
 DD Form 2505, Abandoned Vehicle Removal Authorization
 DD Form 2506, Vehicle Impoundment Report
 DD Form 2507, Notice of Vehicle Impoundment

Other References

8 U.S.C. 13.
 40 U.S.C. 318a.

Memorandum of Understanding, Subject: Seizure of Assets for Administrative Forfeiture in Drug Related Cases.

APPENDICES B—C TO PART 636 [RESERVED]

APPENDIX D TO PART 636—GLOSSARY

In addition to the terms listed in appendix D to part 634 of this subchapter, the following terms apply:

ATV—All Terrain Vehicles
 CID—Criminal Investigation Division
 CUCV—Commercial Utility Cargo Vehicle
 DDC—Defensive Driving Course
 DOD—Department of Defense
 DPCA—Directorate of Personnel and Community Activities
 DUI—Driving Under the Influence
 DDC—Motorcycle Defensive Driving Course
 MP—Military Police
 NLT—Not later than
 USAREUR—United States Army—Europe

SUBCHAPTER J—REAL PROPERTY

PARTS 641—642 [RESERVED]

PART 643—REAL ESTATE

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AUTHORITY: 10 U.S.C. 2667.

SOURCE: 43 FR 29748, July 10, 1978, unless otherwise noted.

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 unions 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.

Instruments 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 complying 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 ex-

tent 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, 470l-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 permitting 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 immediate 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 pur-

pose 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 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 non-exclusive 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 non-compensable. 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-stand-

ard 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

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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 adjust-

ments 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 where in 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-Fed-

eral 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 acquisition 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 individual 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 acquisition 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 acquisition.

(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 Engi-

neers 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 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 submit-

ted 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