

### §211.3

### 33 CFR Ch. II (7-1-04 Edition)

Army of preliminary plans and surveys to the Congress for consideration and approval.

(c) *Local cooperation.* As a general rule in river and harbor and flood control projects, except channel improvements, channel rectifications, dam and reservoir, and certain other types of projects, local interests are required to provide without cost to the United States, all lands, easements and rights-of-way necessary for the construction of the projects.

#### §211.3 Function of Chief of Engineers.

(a) The Chief of Engineers, under the authority of the Secretary of the Army, is charged with the responsibility for the acquisition, management and disposal of all real estate or interests therein required for use by the Department of the Army for river and harbor, flood control and allied purposes.

#### §211.4 Acquisition of land.

(a) Real property and interests therein may be acquired by the Department of the Army by:

- (1) Purchase.
- (2) Condemnation.
- (3) Transfer from other Government departments and agencies.
- (4) Lease or similar instrument.
- (5) Donation or gift.

(b) *Methods of acquisition*—(1) *Purchase.* It is the policy of the Department of the Army to secure title to lands, or the desired interest therein, by direct negotiation and purchase, where possible. Each tract of land to be acquired is approved by qualified appraisers for the purpose of determining the market value. Options for the purchase of land will not be negotiated containing reservations or exceptions by landowners or subject to outstanding rights in third parties which may interfere with the use of the land for which it is being acquired. In no case will an option be negotiated in which a vendor excepts or reserves the right to repurchase the property, or undertakes to convey subject to rights in a third party. Generally, landowners or tenants are authorized to reserve, or except from the sale, crops, timber, buildings and improvements with the right to remove same within a speci-

fied period, provided such buildings, etc., are not required for use by the Department of the Army. Land is acquired subject to public highways, roads, railroads, pipelines, and other utilities, and if it is determined that they interfere with the Government's use of the property, will be relocated or extinguished by contract between the Government and State, county or utility involved. If at any time in the course of acquisition by direct purchase, it becomes apparent that acquisition by such means will involve substantial delay or cannot be accomplished because of title defects which cannot be eliminated within a reasonable time, or because of failure to agree on the price to be paid, action is taken to acquire the land by condemnation.

(2) *Condemnation.* Condemnation of land is accomplished by the Secretary of the Army requesting the Attorney General to file a condemnation petition and procure an order from the court in the Federal Judicial District where the land is located, granting to the United States the right of immediate possession. The declaration of taking act (40 U.S.C. 258a-d) permits the Government to file a declaration of taking in conjunction with the condemnations proceedings, and provides that title to the property described therein vests immediately upon filing of the declaration in court and deposit of the Government's estimate of compensation, named in the declaration, in the registry of the court. The court may enter orders directing that all or part of the money deposited by the Government be paid to the owner of the land or other persons having an interest therein. This payment is without prejudice to the landowner's right to seek a higher value for his land in the trial of the case before the court. Pending or during the trial under condemnation proceedings, negotiations may still be conducted with the landowner for the direct purchase of his property, and in the event an agreement is reached, action is taken to dismiss the land in question from the condemnation proceedings.

(3) *Transfer of land.* Transfer of land from other Government agencies to the Department of the Army is generally

accomplished by obtaining a use permit, or if the land is desired permanently, then by transfer under applicable legislative authority. In the absence of such authority, a permit is obtained pending enactment of special legislation by the Congress. Public domain land under the Department of the Interior may be withdrawn and set aside for the use of the Department of the Army by Executive order or a Public Land Order.

(4) *Lease.* The negotiation of leases for river and harbor and flood control purposes must be approved by the Chief of Engineers or his duly authorized representative.

TEMPORARY USE BY OTHERS OF CIVIL  
WORKS REAL ESTATE

AUTHORITY: Sections 211.5 through 211.9 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: 13 FR 8748, Dec. 30, 1948, unless otherwise noted.

**§211.5 Temporary use; how granted.**

There are three methods by which the temporary use of real estate under the control of the Department of the Army may be granted: Lease, easement and licenses, or permit.

**§211.6 Rights which may be granted by the Secretary of the Army in river and harbor and flood control property.**

(a) *Leases.* (1) The Secretary of the Army is authorized, whenever he shall deem it to be advantageous to the Government, to lease such real property under the control of his Department as is not surplus to the needs of the Department within the meaning of the act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary of the Army shall determine that a longer period will promote the national defense or will be in the public interest. The Secretary of the Army may include, among other terms and conditions in the lease, a right of first refusal in the lessee to purchase the

property in the event of the revocation of the lease in order to permit sale thereof by the Government, but this shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law. Each such lease shall contain a provision permitting the Secretary of the Army to revoke the lease at any time, unless he shall determine that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event each such lease shall be revocable by the Secretary of the Army during a national emergency declared by the President. Notwithstanding section 321 of the act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), or any other provision of law, any such lease may provide for the maintenance, protection, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. In the event utilities or services shall be furnished by the Department of the Army to the lessee in connection with any lease, payments for utilities or services so furnished may be covered into the Treasury to the credit of the appropriation or appropriations from which the costs of furnishing any such utilities or services to the lessee was paid. Except as otherwise provided in this paragraph, any money rentals received by the Government directly under any such lease shall be deposited and covered into the Treasury as miscellaneous receipts. The authority granted in this section shall not apply to oil, mineral, or phosphate lands (10 U.S.C. 2667).

(2) The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities in reservoir areas under the control of the Department of the Army and to permit the construction, maintenance, and operation of such facilities. The Secretary of the Army is authorized to grant leases of lands, including structures or facilities thereon, in reservoir areas for such periods and upon such terms as he may deem reasonable: *Provided*, That leases to non-profit organizations may