

PART 234—CONDUCT ON THE PENTAGON RESERVATION

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AUTHORITY: 10 U.S.C. 131 and 2674(c).

SOURCE: 63 FR 32619, June 15, 1998, unless otherwise noted.

§ 234.1 Definitions.

As used in this part.

Authorized person. An employee or agent of the Defense Protective Service, or any other Department of Defense employee or agent who has delegated authority to enforce the provisions of this part.

Operator. A person who operates, drives, controls, otherwise has charge of, or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

Pentagon Reservation. Area of land and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including all roadways, walkways, waterways, and all areas designated for the parking of vehicles.

Permit. A written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

Possession. Exercising direct physical control or dominion, with or without ownership, over property.

State law. The applicable and nonconflicting laws, statutes, regulations, or

ordinances, and codes of the state(s) and other political subdivision(s) within whose exterior boundaries the Pentagon Reservation or a portion thereof is located.

Traffic. Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any road, path, street, or other thoroughfare for the purposes of travel.

Vehicle. Any vehicle that is self-propelled or designed for self-propulsion, any motorized vehicle, and any vehicle drawn by or designed to be drawn by a motor vehicle, including any device in, upon, or by which any person or property is or can be transported or drawn upon a highway, hallway, or pathway; to include any device moved by human or animal power, whether required to be licensed in any state or otherwise.

Weapons. Any loaded or unloaded pistol, rifle, shotgun, or other device which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant, by compressed gas, or by spring power; any bow and arrow, crossbow, blowgun, spear gun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles; any other weapon, device, instrument, material, or substance, animate or inanimate that is used for or is readily capable of, causing death or serious bodily injury, including any weapon the possession of which is prohibited under the laws of the state in which the Pentagon Reservation or portion thereof is located; except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

[63 FR 32619, June 15, 1998, as amended at 63 FR 49003, Sept. 14, 1998]

§ 234.2 Applicability.

The provisions of this part apply to all areas, lands, and waters on or adjoining the Pentagon Reservation and under the jurisdiction of the United States, and to all persons entering in or on the property. They supplement those penal provisions of Title 18, United States Code, relating to crimes and criminal procedure and those provisions of State law that are federal criminal offenses by virtue of the Assimilative Crimes Act, 18 U.S.C. 13.

§ 234.3 Admission to property.

(a) Access to the Pentagon Reservation or facilities thereon shall be restricted in accordance with Department of Defense Administrative Instruction Number 30¹ in order to ensure the orderly and secure conduct of Department of Defense business. Admission to facilities or restricted areas shall be limited to employees and other persons with proper authorization.

(b) All persons entering or upon the Pentagon Reservation shall, when required and/or requested, display identification to authorized persons.

(c) All packages, briefcases, and other containers brought into, on, or being removed from facilities or restricted areas on the Pentagon Reservation are subject to inspection and search by authorized persons. Persons entering on facilities or restricted areas who refuse to permit an inspection and search will be denied entry.

(d) Any person or organization desiring to conduct activities anywhere on the Pentagon Reservation shall file an application for permit with the applicable Building Management Office. Such application shall be made on a form provided by the Department of Defense and shall be submitted in the manner specified by the Department of Defense. Violation of the conditions of a permit issued in accordance with this section is prohibited and may result in the loss of access to the Pentagon Reservation.

§ 234.4 Trespassing.

(a) Trespassing, entering, or remaining in or upon property not open to the public, except with the express invitation or consent of the person or persons having lawful control of the property, is prohibited. Failure to obey an order to leave under paragraph (b) of this section, or reentry upon property after being ordered to leave or not reenter under paragraph (b) of this section, is also prohibited.

(b) Any person who violates a Department of Defense rule or regulation may

¹Forward written requests for copies of the document to the Directorate for Freedom of Information and Security Review, Room 2C757, 1400 Defense Pentagon, Washington, D.C. 20301-1400.

be ordered to leave the Pentagon Reservation by an authorized person. A violator's reentry may also be prohibited.

§ 234.5 Compliance with official signs.

Persons on the Pentagon Reservation shall at all times comply with official signs of a prohibitory, regulatory, or directory nature.

§ 234.6 Interfering with agency functions.

The following are prohibited:

(a) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(b) *Violation of a lawful order.* Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, law enforcement actions, and emergency operations that involve a threat to public safety or government resources, or other activities where the control of public movement and activities is necessary to maintain order and public health or safety.

(c) *False information.* Knowingly giving a false or fictitious report or other false information:

(1) To an authorized person investigating an accident or violation of law or regulation, or

(2) On an application for a permit.

(d) *False report.* Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the government to a fictitious event.

§ 234.7 Disorderly conduct.

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or in violent behavior.

(b) Uses language, an utterance, or gesture, or engages in a display or act

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that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(c) Makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(d) Creates or maintains a hazardous or physically offensive condition.

(e) Impedes or threatens the security of persons or property, or disrupts the performance of official duties by Department of Defense employees, or obstructs the use of areas such as entrances, foyers, lobbies, corridors, concourses, offices, elevators, stairways, roadways, driveways, walkways, or parking lots.

[63 FR 32619, June 15, 1998, as amended at 63 FR 49003, Sept. 14, 1998]

§ 234.8 Preservation of property.

Willfully destroying or damaging private property is prohibited. The throwing of articles of any kind from or at buildings or persons, improper disposal of rubbish, and open fires are also prohibited.

§ 234.9 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit issued by the applicable Building Management Office. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State law.

(b) Using or possessing fireworks or firecrackers is prohibited, except in designated areas under such conditions as may be established by the applicable Building Management Office or pursuant to the terms and conditions of a permit issued by the applicable Building Management Office, and in accordance with applicable State law.

(c) Violation of the conditions established by the applicable Building Management Office or of the terms and conditions of a permit issued in accordance with this section is prohibited and

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may result in the loss of access to the Pentagon Reservation.

§ 234.10 Weapons.

(a) Except as otherwise authorized under this section, the following are prohibited:

- (1) Possessing a weapon.
- (2) Carrying a weapon.
- (3) Using a weapon.

(b) This section does not apply to any agency or Department of Defense component that has received prior written approval from the Defense Protective Service to carry, transport, or use a weapon in support of a security, law enforcement, or other lawful purpose while on the Pentagon Reservation.

§ 234.11 Alcoholic beverages and controlled substances.

(a) *Alcoholic beverages.* The consumption of alcoholic beverages or the possession of an open container of an alcoholic beverage within the Pentagon Reservation is prohibited unless authorized by the Director, Washington Headquarters Services, or his designee, or the Heads of the Military Departments, or their designees. Written notice of such authorizations shall be provided to the Defense Protective Service.

(b) *Controlled substances.* The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a licensed physician or pharmacist in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted, or constructive transfer of a controlled substance.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly from, or pursuant to a valid prescription or order by, a licensed physician or pharmacist, or as otherwise allowed by Federal or State law.

(c) Presence on the Pentagon Reservation when under the influence of alcohol, a drug, a controlled substance, or any combination thereof, to a degree that may endanger oneself or another person, or damage property, is prohibited.

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§ 234.12 Restriction on animals.

Animals, except guide dogs for persons with disabilities, shall not be brought upon the Pentagon Reservation for other than official purposes.

§ 234.13 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms upon the Pentagon Reservation is prohibited. This does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR parts 110 and 950, Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations, issued by the U.S. Office of Personnel Management under Executive Order 12353, 3 CFR, 1982 Comp., p. 139, as amended.

(b) Personal notices posted on authorized bulletin boards, and in compliance with building rules governing the use of such authorized bulletin boards, advertising to sell or rent property of Pentagon Reservation employees or their immediate families.

(c) Solicitation of labor organization membership or dues authorized by the Department of Defense under the Civil Service Reform Act of 1978.

(d) Licensees, or their agents and employees, with respect to space licensed for their use.

(e) Solicitations conducted by organizations composed of civilian employees of the Department of Defense or members of the uniformed services among their own members for organizational support or for the benefit of welfare funds for their members, after compliance with the requirements of § 234.3(d).

[63 FR 32619, June 15, 1998, as amended at 63 FR 49003, Sept. 14, 1998]

§ 234.14 Posting of materials.

Posting or affixing materials, such as pamphlets, handbills, or fliers on the Pentagon Reservation is prohibited except as provided by § 234.13(b) or when conducted as part of activities ap-

proved by the applicable Building Management Office under § 234.3(d).

[63 FR 32619, June 15, 1998, as amended at 63 FR 49003, Sept. 14, 1998]

§ 234.15 Use of visual recording devices.

The use of cameras or other visual recording devices in restricted areas or in internal offices must be approved by the Department of Defense component occupying the space. Photographs for advertising or commercial purposes may only be taken with the permission of the Office of the Assistant to the Secretary of Defense for Public Affairs.

§ 234.16 Gambling.

Gambling in any form, or the operation of gambling devices, is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by the provisions of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*).

§ 234.17 Vehicles and traffic safety.

(a) *In general.* Unless specifically addressed by regulations in this part, traffic and the use of vehicles within the Pentagon Reservation are governed by State law. Violating a provision of State law is prohibited.

(b) *Open container of an alcoholic beverage.* (1) Each person within a vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(2) Carrying or storing a bottle, can, or other receptacle containing an alcoholic beverage that is open or has been opened, or whose seal is broken, or the contents of which have been partially removed, within a vehicle on the Pentagon Reservation is prohibited.

(3) This section does not apply to:

(i) An open container stored in the trunk of a vehicle or, if a vehicle is not equipped with a trunk, an open container stored in some other portion of the vehicle designed for the storage of luggage and not normally occupied by

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or readily accessible to the operator or passengers; or

(ii) An open container stored in the living quarters of a motor home or camper.

(4) For the purpose of paragraph (a)(3)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a vehicle.

(c) *Operating under the influence of alcohol, drugs, or controlled substances.* (1) Operating or being in actual physical control of a vehicle is prohibited while:

(i) Under the influence of alcohol, a drug or drugs, a controlled substance or controlled substances, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(ii) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided, however, that if State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(2) The provisions of paragraph (c)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(3) *Tests.* (i) At the request or direction of an authorized person who has probable cause to believe that an operator of a vehicle within the Pentagon Reservation has violated a provision of paragraph (c)(1) of this section, the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol, drug, and controlled substance content.

(ii) Refusal by an operator to submit to a test is prohibited and may result in detention and citation by an authorized person. Proof of refusal may be admissible in any related judicial proceeding.

(iii) Any test or tests for the presence of alcohol, drugs, and controlled substances shall be determined by and administered at the direction of an authorized person.

(iv) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(4) *Presumptive levels.* (i) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of this section. If the alcohol concentration in the operator's blood or breath at the time of the testing is less than the alcohol concentration specified in paragraph (c)(1)(ii) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(ii) The provisions of paragraphs (c)(3) and (c)(4)(i) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or drugs, or a controlled substance or controlled substances, or any combination thereof.

[63 FR 32619, June 15, 1998, as amended at 63 FR 49003, Sept. 14, 1998]

§ 234.18 Enforcement of parking regulations.

Parking regulations for the Pentagon Reservation shall be enforced in accordance with Department of Defense Administrative Instruction Number 88² and State law; violating such provisions is prohibited. A vehicle parked in any location without authorization, or parked contrary to the directions of posted signs or markings, shall be subject to removal at the owner's risk and expense, in addition to any penalties imposed. The Department of Defense assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This section may be supplemented from time to time with the approval of the Director, Washington Headquarters Services, or his designee, by the issuance and posting of such parking directives as may be required,

²See footnote 1 to § 234.3(a).

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and when so issued and posted such directive shall have the same force and effect as if made a part hereof.

§ 234.19 Penalties and effect on other laws.

(a) Whoever shall be found guilty of willfully violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Whoever violates any rule or regulation enumerated in this part is liable to the United States for a civil penalty of not more than \$1,000.

(c) Nothing in this part shall be construed to abrogate any other Federal laws.

PART 235—SALE OR RENTAL OF SEXUALLY EXPLICIT MATERIAL ON DoD PROPERTY

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- 235.1 Purpose.
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- 235.7 Information requirements.

AUTHORITY: 10 U.S.C. 2489a.

SOURCE: 64 FR 6218, Feb. 9, 1999, unless otherwise noted.

§ 235.1 Purpose.

This part implements 10 U.S.C. 2489a, consistent with DoD Directive 1330.9¹ by providing guidance about restrictions on the sale or rental of sexually explicit materials on property under the jurisdiction of the Department of Defense or by members of the Armed Forces or DoD civilian officers or employees, acting in their official capacities.

§ 235.2 Applicability and scope.

This part: (a) Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of

the Department of Defense, the Defense Agencies, and the DoD Field Activities.

(b) Shall not confer rights on any person.

§ 235.3 Definitions.

Dominant theme. A theme of any material that is superior in power, influence, and importance to all other themes in the material combined.

Lascivious. Lewd and intended or designed to elicit a sexual response.

Material. An audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium.

Property under the jurisdiction of the Department of Defense. Commissaries operated by the Defense Commissary Agency and facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Marine Corps Exchanges, and U.S. Navy ships' stores (sometimes referred to collectively herein as "retail outlets"), excluding, for the purposes of this part, entities that are not instrumentalities of the United States.

Sexually explicit material. Material, the dominant theme of which is the depiction or description of nudity, including sexual or excretory activities or organs, in a lascivious way.

§ 235.4 Policy.

In implementing 10 U.S.C. 2489a, it is DoD policy that: (a) No sexually explicit material may be offered for sale or rental on property under the jurisdiction of the Department of Defense, and no member of the Armed Forces, or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material.

(b) Material shall not be deemed sexually explicit because of any message or point of view expressed therein.

§ 235.5 Responsibilities.

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Monitor and, as to DoD resale activities under the Assistant Secretary's authority, direction and control, ensure compliance with this part;

¹Copies are available at <http://web7.osd.mil/corres.htm>.