

PART 212—PRIVATE ORGANIZATIONS ON DoD INSTALLATIONS

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 63 FR 32616, June 15, 1998, unless otherwise noted.

§ 212.1 Reissuance and purpose.

This part:

- (a) Revises 32 CFR part 212.
- (b) Implements policy in DoD Directive 5124.5.¹
- (c) Updates responsibilities and procedures to define and reestablish parameters for private organizations located on DoD installations for their authorization and support.

§ 212.2 Applicability.

This part applies to:

- (a) The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and DoD Field Activities (hereafter referred to collectively as the “DoD Components”).
- (b) Private organizations authorized to operate on DoD installations.

§ 212.3 Definitions.

- (a) *DoD Installation*. A location, facility, or activity owned, leased, assigned to, controlled, or occupied by a DoD Component.
- (b) *Private Organizations*. Self-sustaining and non-Federal entities, incorporated or unincorporated, which are operated on DoD installations with the written consent of the installation commander or higher authority, by individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Federal Government.

¹Copies may be obtained, if needed, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

§ 212.4 Policy.

It is DoD policy under DoD Directive 5124.5 that procedures be established for the operation of private organizations on DoD installations to prevent the official sanction, endorsement, or support by DoD Components except as in 32 CFR part 84. Private organizations are not entitled to sovereign immunity and privileges accorded to Federal entities and instrumentalities. Private organizations are not Federal entities and are not to be treated as such, in order to avoid conflicts of interest and unauthorized expenditures of appropriated, commissary surcharge, or nonappropriated funds.

§ 212.5 Responsibilities.

(a) The *Assistant Secretary of Defense for Force Management Policy*, under the *Under Secretary of Defense for Personnel and Readiness*, shall be responsible for all policy matters and OSD oversight for the monitoring of private organizations on DoD installations.

(b) The *Heads of the DoD Components* shall implement this part, shall be kept aware of all private organizations located on installations under their jurisdictions, and ensure that periodic reviews of private organizations are conducted to:

(1) Ensure for each such private organization that the membership provisions and purposes on the basis of which the organization was permitted on the installation continue to apply, thereby justifying continuance on the installation. Substantial changes to those conditions shall necessitate further review, documentation, and approval for continued permission to remain on the installation.

(2) Furnish reports to the Assistant Secretary of Defense for Force Management Policy on private organizations covered by this part as required.

§ 212.6 Procedures.

(a) To prevent the appearance of an official sanction or support by the Department of Defense, a private organization covered by this part shall not utilize the following in its title or letterhead:

(1) The name or seal of the Department of Defense or the acronym “DoD.”

(2) The name, abbreviation, or seal of any DoD Component or instrumentality.

(3) The seal, insignia, or other identifying device of the local installation.

(4) Any other name, abbreviation, seal, logo, insignia, or the like, used by any DOD Component to identify any of its programs, locations, or activities.

(b) Activities of private organizations covered by this part shall not in any way prejudice or discredit the DoD Components or the other Agencies of the Federal Government.

(c) The nature, function, and objectives of a private organization covered by this part shall be delineated in a written constitution, by-laws, charter, articles of agreement, or other authorization documents acceptable to the head of the DoD installation. That documentation shall also include:

(1) Description of membership eligibility in the private organization.

(2) Designation of management responsibilities, to include the accountability for assets, satisfaction of liabilities, disposition of any residual assets on dissolution, and other matters that show responsible financial management.

(3) Documentation indicating an understanding by all members as to whether they are personally liable if the assets are insufficient to discharge all liabilities.

(d) A private organization covered by this part that offers programs or services similar to either appropriated or nonappropriated fund activities on a DoD installation shall not compete with, but may, when specifically authorized in the approval document, supplement those activities.

(e) Private organizations covered by this part shall be self-sustaining, primarily through dues, contributions, service charges, fees, or special assessment of members. There shall be no financial assistance to a private organization from a nonappropriated fund instrumentality in the form of contributions, repairs, services, dividends, or other donations of money or other assets. Fundraising and membership drives are governed by 32 CFR part 84.

(f) The DoD Components may provide logistical support to private organizations with appropriated Federal Gov-

ernment resources in accordance with 32 CFR part 84. In conformance with DoD Directive 1015.1,² nonappropriated fund instrumentalities funds or assets shall not be directly or indirectly transferred to private organizations.

(g) Personal and professional participation in private organizations by DoD employees is governed by 32 CFR part 84.

(h) Neither appropriated fund activities nor nonappropriated fund instrumentalities may assert any claim to the assets, or incur or assume any obligation of any private organization covered by this part except as may arise out of contractual relationships. Property abandoned by a private organization on its disestablishment or departure from the installation, or donated by it to the installation, may be acquired by the DoD installation under the terms of applicable agreements, statutes, and DoD policy.

(i) Adequate insurance, as defined by the Service concerned, shall be secured by the organization to protect against public liability and property damage claims or other legal actions that may arise as a result of activities of the organization or one or more of its members acting in its behalf, or the operation of any equipment, apparatus or device under the control and responsibility of the private organization.

(j) Private organizations shall be responsible for ensuring applicable fire and safety regulations, environmental laws, local, state, and Federal tax codes, and any other applicable statutes and regulations are complied within the operation of the private organization.

(k) Income shall not accrue to individual members except through wages and salaries as employees of the private organization or as award recognition for service rendered to the private organization or military community. The head of a DoD installation concerned may approve the operation of private organizations, such as investment clubs, in which the investment of members' personal funds result in a return on investment directly and solely to the individual members.

²See footnote to §212.1(b).

(l) No person because of race, color, creed, sex, age, disability or national origin shall be unlawfully denied membership, unlawfully excluded from participation, or otherwise subjected to unlawful discrimination by any private organization on a DoD installation covered by this part. DoD installations will publicly disseminate information on procedures for individuals to follow at the local installation when unlawful discrimination by private organizations is suspected.

(m) Applicable laws on labor standards for employment shall be observed.

(n) This part does not apply to the following organizations, which are governed by DoD Directives and Instructions as referenced:

(1) Scouting organizations operating at U.S. military installations located overseas (DoD Instruction 1015.9).³

(2) American National Red Cross (DoD Directive 1330.5).⁴

(3) United Service Organizations, Inc. (DoD Directive 1330.12).⁵

(4) United Seamen's Service (DoD Directive 1330.16).⁶

(5) Financial Institutions on DoD Installations (32 CFR part 231).

(o) Certain unofficial activities may be conducted on DoD installations, but need not be formally authorized because of the limited scope of their activities, membership or funds. Examples are office coffee funds, flower funds, and similar small, informal activities and funds. DoD Components shall establish the basis upon which such informal activities and funds shall operate.

PART 213—SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DOD INSTALLATIONS

Sec.

213.1 Purpose.

213.2 Applicability and scope.

213.3 Definition.

213.4 Policy.

213.5 Responsibilities.

AUTHORITY: 10 U.S.C. 2554 and 2606.

³See footnote to §212.1(b).

⁴See footnote to §212.1(b).

⁵See footnote to §212.1(b).

⁶See footnote to §212.1(b).

SOURCE: 72 FR 56012, Oct. 2, 2007, unless otherwise noted.

§213.1 Purpose.

(a) Authorizes 32 CFR part 212.

(b) Establishes policy and assigns responsibilities under DoD Directive 5124.8¹ for standardizing support to non-Federal entities authorized to operate on DoD installations.

(c) Designates the Secretary of the Army as the DoD Executive Agent (DoD EA) according to DoD Directive 5101.1:²

(1) For DoD support to the Boy Scouts of America (BSA) and Girl Scouts of the United States of America (GSUSA) local councils and organizations in areas outside of the United States 10 U.S.C. 2606. DoD support will also cover the periodic national jamboree according to 10 U.S.C. 2606.

(2) To perform the annual audit of the American Red Cross (ARC) accounts and to prepare and submit the annual report to Congress according to 36 U.S.C. 300110.

(3) To provide the ARC with the necessary deployment support.

(d) Designates the Secretary of the Air Force as the DoD EA responsible for conducting the Armed Forces Entertainment (AFE) program.

§213.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components") and non-Federal entities authorized to operate on DoD installations.

(b) Shall not revise, modify, or rescind any Memorandum of Understanding (MOU) between a non-Federal entity and the U.S. Government or the Department of Defense or their implementing arrangements in existence as

¹Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

²Copies may be obtained at <http://www.dtic.mil/whs/directives/>.