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(2) Changing the location of the proposed project.

(3) Limiting daily operating hours or the number of days the equipment in the proposed structure is in use in order to avoid interference with military activities.

(4) Providing a voluntary contribution of funds to offset the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of the project on military operations and readiness.

§211.10 Reporting determinations to Congress.

(a) Not later than 30 days after making a determination of unacceptable risk pursuant to §211.6, the senior officer shall submit to the congressional defense committees a report on such determination and the basis for such determination.

(b) Such a report shall include—

(1) An explanation of the operational impact that led to the determination.

(2) A discussion of the mitigation options considered.

(3) An explanation of why the mitigation options were not feasible or did not resolve the conflict.

Subpart D—Communications and Outreach

§211.11 Communications with the Clearinghouse.

All communications to the Clearinghouse by applicants, requesters, or members of the public should be addressed to: Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), Room 5C646, 3400 Defense Pentagon, Washington, DC 20301-3400, or, if by electronic mail, to *DoDSitingClearinghouse@osd.mil*. Additional information about the Clearinghouse and means of contacting it are available at the following URL: *http://www.acq.mil/ie/sch*.

§211.12 Public outreach.

(a) The DoD shall establish a Web site accessible to the public that—

(1) Lists the applications that the DoD is currently considering.

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(2) Identifies the stage of the action, e.g., preliminary review, referred for mitigation discussions, determined to be an unacceptable risk.

(3) Indicates how the public may provide comments to the DoD.

(b) The Clearinghouse shall publish a handbook to provide applicants, requesters, and members of the public with necessary information to assist them in participating in the Mission Compatibility Evaluation Process.

PART 212—PROCEDURES AND SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DEPARTMENT OF DEFENSE (DOD) INSTALLATIONS

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APPENDIX A TO PART 212—NON-FEDERAL ENTITIES HAVING STATUTORY AUTHORIZATION FOR PARTICULAR SUPPORT

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 2554; 10 U.S.C. 2606; and 36 U.S.C. 300110

SOURCE: 73 FR 59506, Oct. 9, 2008, unless otherwise noted.

§212.1 Purpose.

This part:

(a) Implements 32 CFR part 213.

(b) Updates responsibilities and procedures to define and reestablish a framework for non-Federal entities authorized to operate on Department of Defense (DoD) installations.

§212.2 Applicability.

(a) This part applies to:

(1) The Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of 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”).

(2) Non-Federal entities authorized to operate on DoD installations.

(b) This part shall not apply to:

- (1) Military relief societies.
- (2) Banks or credit unions according to 32 CFR part 230.

(3) Support provided under Innovative Readiness Training according to DoD Directive 1100.20.¹

§ 212.3 Definitions.

DoD installation. As used in this instruction, a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility or, in the case of an activity in a foreign country, under the operational control of the Department of Defense. This term does not include any facility used primarily for civil works, rivers and harbor projects, or flood control projects.

Non-Federal entities. A self-sustaining organization, incorporated or unincorporated, that is not an agency or instrumentality of the Federal government. This part addresses only those entities that operate on DoD installations with the express consent of the installation commander or higher authority. Membership of these organizations consists of individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Federal Government. Non-Federal entities include a State, interstate, Indian tribal, or local government, as well as private organizations.

United States. As used in this part, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, Johnston Atoll, Kingman Reef, Midway Island, Nassau Island, Palmyra Island, Wake Island, and any other territory or possession of the United States, and associated navigable waters, including the territorial seas.

§ 212.4 Policy.

It is DoD policy, consistent with 32 CFR part 213, that procedures be estab-

¹Copies of unclassified DoD Directives, Instructions, Publications, and Administrative Instructions may be obtained at <http://www.dtic.mil/whs/directives/>.

lished for the operation of non-Federal entities on DoD installations to prevent official sanction, endorsement, or support by the DoD Components except as authorized in DoD 5500.7-R and applicable law. The Department recognizes that non-Federal entity support of Service members and their families can be important to their welfare. Non-Federal entities are not entitled to sovereign immunity and privileges accorded to Federal agencies and instrumentalities. The DoD Components shall take action to preclude unauthorized expenditures of appropriated funds, commissary surcharge, or non-appropriated funds (NAF) in support of these organizations.

§ 212.5 Responsibilities.

(a) The Principal Deputy Under Secretary for Personnel and Readiness, under the Under Secretary of Defense for Personnel and Readiness and in coordination with the Deputy Under Secretary of Defense for Installations and Environment and subject to DoD Directive 4165.6, shall be responsible for implementing policy and oversight of non-Federal entities on DoD installations.

(b) The Heads of the DoD Components shall:

- (1) Implement this part.
- (2) Be aware of all non-Federal entities operating on installations under their jurisdiction.

(3) Conduct reviews to ensure installation commanders periodically review facilities, programs, and services provided by non-Federal entities operating on DoD installations. Installation commanders will also review membership provisions and the original purpose for which each organization was originally approved. Substantial changes to those original conditions shall necessitate further review, documentation, and approval for continued permission to operate on the installation.

§ 212.6 Procedures.

(a) To prevent the appearance of official sanction or support by the Department of Defense:

- (1) Non-Federal entities may not use the seals, logos, or insignia of the Department of Defense or any DoD Component, DoD organizational unit, or

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DoD installation on organization letterhead, correspondence, titles, or in association with organization programs, locations, or activities.

(2) Non-Federal entities operating on DoD installations may use the name or abbreviation of the Department of Defense, a DoD Component, organizational unit, or installation in its name provided that its status as a non-Federal entity is apparent and unambiguous and there is no appearance of official sanction or support by the Department of Defense. The following applies:

(i) The non-Federal entity must have approval from the appropriate DoD organization whose name or abbreviation is to be used before using the name or abbreviation.

(ii) Any use of the name or abbreviation of a DoD Component, organizational unit, or installation must not mislead members of the public to assume a non-Federal entity is an organizational unit of the Department of Defense.

(iii) A non-Federal entity must prominently display the following disclaimer on all print and electronic media mentioning the entity's name confirming that the entity is not a part of the Department of Defense: "THIS IS A NON-FEDERAL ENTITY. IT IS NOT A PART OF THE DEPARTMENT OF DEFENSE OR ANY OF ITS COMPONENTS AND IT HAS NO GOVERNMENTAL STATUS." This disclaimer must also be provided in appropriate oral communications and public announcements when the name of the entity is used.

(b) Activities of non-Federal entities covered by this part shall not in any way prejudice or discredit the DoD Components or other Federal Government agencies.

(c) Subject to DoD Directive 4165.6 as it relates to real property, installation commanders shall approve written agreements that indicate permission to operate on the installation and any logistical support that will be provided. DoD personnel acting in an official capacity will not execute any charter that will serve as the legal basis for the non-Federal entity. The nature, function, and objectives of a non-Federal entity covered by this part shall be delineated in articles of incorporation, a

written constitution, bylaws, charters, articles of agreement, or other authorization documents before receiving approval from the installation commander to operate on the installation. That documentation shall also include:

(1) Description of eligible membership in the non-Federal entity.

(i) 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 non-Federal entity or other private organization covered by this part.

(ii) Installation commanders will distribute information on procedures for individuals to follow when they suspect unlawful discrimination by the organization.

(2) Designation of management responsibilities, including the accountability for assets, satisfaction of liabilities, disposition of any residual assets on dissolution, and other documentation that shows responsible financial management.

(3) A certification indicating that members understand they are personally liable, as provided by law, if the assets of the non-Federal entity are insufficient to discharge all liabilities.

(4) Guidance relating to professional scouting organizations operating at U.S. military installations located overseas can be found in DoD Instruction 1015.9.

(i) In accordance with DoD 5500.7-R, which contains a policy on sponsorship of non-Federal entities by DoD personnel acting in an official capacity, DoD personnel acting in an official capacity shall not execute charters that serve as the legal basis for the creation of Boy Scouts organizations (including Boy Scouts, Cub Scout Packs, or Venturer Crews).

(ii) In accordance with U.S. District Court for the Northern District of Illinois, Eastern Division, Decision No. 1999 CV 02424, while such chartering is not allowed, nothing in this part is intended to preclude, if otherwise authorized by law or regulation, DoD support to Boy Scouts or their official affiliates; Boy Scouts activities on DoD installations; or sponsorship of Boy Scout organizations by DoD personnel

in their personal capacity. Existing charters executed by DoD personnel in their official capacity shall be terminated or amended to substitute sponsorship by an appropriate individual, volunteer, group, or organization, consistent with DoD policy.²

(d) A non-Federal entity covered by this part shall not offer programs or services on DoD installations that compete with appropriated or NAF activities, but may, when specifically authorized, supplement those activities.

(1) Installation commanders, or higher authorities if the installation commander has not been delegated such authority, will determine if the services of a non-Federal entity conflict with or detract from local DoD programs. The cognizant commander has discretionary authority over the operations of non-Federal entities on DoD installations. Commanders are authorized to eliminate duplication of services, particularly when these services compete with the installation's revenue-generating activities.

(2) Background checks are required for employees and volunteers of non-Federal entities who have contact with children under the age of 18 in DoD-operated, -contracted, or community-based programs that are used to supplement or expand child care or youth services, according to DoD Instruction 1402.5.

(e) Non-Federal entities 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 such an entity from a NAF Instrumentality (NAFI) in the form of contributions, repairs, services, dividends, or other donations of money or other assets. Fundraising and membership drives are governed by DoD 5500.7-R.

(f) Non-Federal entities are not entitled to DoD support. However, support may be provided when it is consistent with and supportive of the military

mission of the DoD Component concerned. Such support may be provided only when it can be offered within the capability of the installation commander without detriment to the commander's ability to fulfill the military mission, and when it is permitted under applicable Status of Forces Agreements. The DoD Components may provide logistical support to non-Federal entities with appropriated funds to the extent authorized by DoD 5500.7-R and applicable law. NAFI funds or assets shall not be directly or indirectly transferred to non-Federal entities according to DoD Instruction 1015.15.

(g) Personal and professional participation in non-Federal entities by DoD employees is governed by DoD 5500.7-R. DoD personnel acting in an official capacity will not execute charters that serve as the legal basis for any non-Federal entity or other private organization.

(h) Neither appropriated fund activities nor NAFIs may assert any claim to the assets, or incur or assume any obligation, of any non-Federal entity covered by this part, except as may arise out of contractual relationships or as provided by law. Property shall not be abandoned on the installation by a non-Federal entity and may only be acquired by the DoD installation by purchase or through donation agreed to by the Department of Defense.

(i) The non-Federal entity shall have adequate insurance, as defined by the DoD Component concerned, to protect against liability and property damage claims or other legal actions that may arise due to its activities, those of its members, or the operation of its equipment or devices. The DoD Components will not assume liability (through insurance or other means) for any activities or assets of non-Federal entities.

(j) Non-Federal entities shall comply with applicable fire and safety regulations; environmental laws; local, State, and Federal tax codes; and any other applicable statutes or regulations.

(k) Income from a non-Federal entity or its activities shall not accrue to individual members of a non-Federal entity except through wages and salaries as employees of the non-Federal entity or as award recognition for services

²Paragraph mandated by "Partial Settlement Agreement Between Plaintiffs and Secretary Rumsfeld", United States District Court for the Northern District of Illinois, Eastern Division, No. 1999 CV 02424 (*Eugene Winkler, et al., v. Chicago School Reform Board of Trustees, et al.*)

rendered to the non-Federal entity or military community. This prohibition is not meant to preclude operation of investment clubs, in which the investment of members' personal funds result in a return on investment directly and solely to the individual members.

(l) Employees of non-Federal entities are not employees of the United States or of an instrumentality of the United States. Applicable laws on labor standards for employment shall be observed, including worker's compensation insurance. Employees of non-Federal entities shall not participate in NAF employee benefit programs based upon

their affiliation with the non-Federal entity.

(m) Non-Federal entities that have statutory authorization for particular support are listed at Appendix A to this part.

(n) Certain unofficial activities conducted on DoD installations do not need formal authorization because of the limited scope of their activities. Examples are office coffee funds, flower funds, and similar small, informal activities and funds. The DoD Components shall establish the basis upon which such informal activities and funds shall operate.

APPENDIX A TO PART 212—NON-FEDERAL ENTITIES HAVING STATUTORY AUTHORIZATION FOR PARTICULAR SUPPORT

Non-Federal entity	Authority
Certain banks and credit unions	Chapter 1770 of title 12, United States Code (U.S.C.). Title 32, Code of Federal Regulations (CFR), part 230.
United Service Organization	Section 220101 of title 36, U.S.C. Title 32, CFR, part 213. Memorandum of Understanding (MOU) between DoD and the United Service Organization.
Labor organizations	Title 5, U.S.C., Chapter 71. DoD 1400.25–M, subchapter 711.
Combined Federal Campaign	Executive Order 12353. Title 5, CFR, part 950. DoD Instruction 5035.1. DoD Instruction 5035.5.
American Registry of Pathology	Section 177 of title 10 U.S.C.
Henry M. Jackson Foundation for the Advancement of Military Medicine.	Section 178 of title 10 U.S.C.
American National Red Cross	Section 2552 of title 10 U.S.C. Section 2602 of title 10 U.S.C. Secretary of The Army Memorandum. "Support to the Red Cross During Times of Conflict". Title 32, CFR, part 213. MOU between the Department of Justice and American Red Cross.
Boy Scouts Jamborees	Section 2554 of title 10 U.S.C.
Girl Scouts International Events (Transportation)	Section 2555 of title 10 U.S.C. DoD Instruction 1015.9.
Shelter for Homeless	Section 2556 of title 10 U.S.C.
National Military Associations; Assistance at National Conventions.	Section 2558 of title 10 U.S.C.
National Veterans' Organizations (Beds and Barracks)	DoD Directive 5410.18. DoD Instruction 5410.19.
United Seamen's Service Organization	Section 2551 of title 10 U.S.C. Section 2604 of title 10 U.S.C. Title 32, CFR, part 213.
Scouting: Cooperation and Assistance in Foreign Areas	Section 2606 of title 10 U.S.C. DoD Instruction 1015.9.
Civil Air Patrol	Section 9441 of title 10 U.S.C. Section 9442 of title 10 U.S.C. Section 40301 of title 36 U.S.C.
Assistance for certain youth and charitable organizations	Section 508 of title 32 U.S.C. DoD Directive 1100.20.
Presidential Inaugural Ceremonies	Section 2553 of title 10 U.S.C.
Specified Sporting Events (Olympics)	Section 2564 of title 10 U.S.C. DoD Directive 2000.15.
Fire Protection Agreements	Section 1856 of title 42 U.S.C. <i>et seq.</i>
Armed Services Young Men's Christian Association	Section 2012 of title 10 U.S.C. Section 2648 of title 10 U.S.C. Section 508 of title 32, U.S.C. MOU between DoD and the Armed Services YMCA.

Non-Federal entity	Authority
Support for Youth Organizations	Section 1058 of Public Law 109-163 (Note to Section 301 of title 5 U.S.C.). Section 8126 of Public Law 109-148 (Note to Section 101 of title 10 U.S.C. and Section 301 of title 5 U.S.C.).

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.

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.

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

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

§ 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 of the effective date of this Directive. Additionally, the Directive shall not revise, modify, or rescind any MOU between the Department of Justice (DoJ) and the Department of Defense that is in existence as of the effective date of this Directive. Any such agreements shall, as they expire, come up for renewal, or as circumstances otherwise permit, be revised to conform to this Directive and any implementing guidance.

(c) Does not apply to banks or credit unions addressed in DoD Directive 1000.11³ or the Civil Air Patrol according to 10 U.S.C. 2554, 2606 and 9441.

§ 213.3 Definition.

Non-federal entities. A non-Federal entity is generally a self-sustaining, non-Federal person or organization, established, operated, and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the Federal Government. This Directive addresses only those entities that may operate on

³Copies may be obtained at <http://www.dtic.mil/whs/directives/>.