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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 252

[Docket ID: DOD-2012-OS-0170]

RIN 0790-AI98

Professional U.S. Scouting Organization Operations at U.S. Military Installations Overseas

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule updates policy and outlines fiscal and logistical support the DoD may provide to qualified scouting organizations operating on U.S. military installations overseas based on Executive Order 12715, Support of Overseas Scouting Activities for Military Dependents, and pertinent statutes as discussed below. It is DoD policy to cooperate with and assist qualified scouting organizations in establishing and providing facilities and services, within available resources, at locations outside the United States to support DoD personnel and their families.

**DATES:** This rule is effective [insert date 30 days from date of publication].

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Wright, 703-588-0172.

**SUPPLEMENTARY INFORMATION:**

The Department of Defense published a proposed rule on November 24, 2014 (79 FR 69777-69781), with a request for public comments. The 60-day public comment period ended on January 23, 2015. One public comment was received. This comment is addressed as follows:

**Comment:** It is my opinion that this unchecked support of the scouting organizations violates the Establishment Clause of Amendment I to the United States Constitution. The Boy Scouts have acted as a religious organization by using religion as a reason to exclude gay scout leaders. Providing facilities and equipment free of charge effectively supports this effort and therefore violates the Establishment Clause. I wholeheartedly do not support this rule change.

**Response:** During litigation, the Department of Defense (DoD), along with the Department of Justice, has consistently defended the legality of the statutorily authorized support to the Boy Scouts of America (BSA) and other organizations. In briefs, the Government has argued that: (1) the BSA is a civic organization, which focuses on citizenship training, community service and outdoor activities and physical fitness; (2) DoD support to the BSA has advanced several compelling military purposes; and (3) DoD support to the BSA does not result in Government indoctrination or endorsement of religion.

## Executive Summary

### I. Purpose of the Regulatory Action

This rule provides that support provided by DoD is documented in written agreements and signed by the appropriate regional combatant commander. Also, it would require installation-specific support and services to be based on a written agreement and signed by the installation commander or designee. These agreements will replace the need for these organizations to submit individual articles of incorporation, written constitutions, charters, or articles of agreement to gain approval from the installation commander to operate on the installation. In addition to Executive Order 12715, Title 10 of the United States Code specifies the DoD's authority to issue rules in this area.

Title 10, U.S.C., section 2606 provides that: The Secretary may collaborate with qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States. Qualified scouting organizations may be furnished support such as some transportation support, available office space, warehousing, utilities, supplies and a means of communication, without charge. The Secretary may reimburse a qualified scouting organization for all or part of the pay of an employee of that organization for any period during which the employee was performing services, however any such reimbursement may not be made from appropriated funds. Employees of a qualified scouting organization will not be considered to be employees of the United States, and the term “qualified scouting organization” means the Girl Scouts of the United States of America and the Boy Scouts of America.

Title 10, U.S.C., section 2554 provides that: The Secretary of Defense is authorized to lend to the Boy Scouts of America without reimbursement, for the use and accommodation of Scouts, Scouters, and officials who attend any national or world Boy Scout Jamboree, items such as cots, blankets, commissary equipment, flags, refrigerators, and other equipment. Additionally, expendable medical supplies and services, as may be necessary or useful to the extent that items are in stock and items or services are available, can be provided at no expense to the United States Government for the delivery, return, rehabilitation, or replacement of such items. Before delivering such property, the Secretary of Defense will take good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States. The Secretary of Defense is also authorized to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and

return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for Boy Scouts, Scouters, and officials certified by the Boy Scouts of America, as representing the Boy Scouts of America at any national or world Boy Scout Jamboree to the extent that such transportation will not interfere with the requirements of military operations. The Secretary of Defense shall take from the Boy Scouts of America, a good and sufficient bond for the reimbursement to the United States, of the actual costs of transportation. If a Boy Scout Jamboree is held on a military installation, the Secretary of Defense may provide personnel services and logistical support at the military installation in addition to the support previously stated. Other departments of the Federal Government are authorized, under such regulations as may be prescribed by the Secretary thereof, to provide to the Boy Scouts of America equipment and other services under the same conditions and restrictions prescribed in the preceding subsections for the Secretary of Defense. The Secretary of Defense shall provide at least the same level of support for a national or world Boy Scout Jamboree as was provided for the preceding national or world Boy Scout Jamboree. The Secretary of Defense may waive all support if it determines that providing the support would be detrimental to the national security of the United States.

Title 10, U.S.C., section 2555 provides: The Secretary of Defense is authorized to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for Girl Scouts and officials certified by the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States. Support is

also authorized for United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and for the equipment and property of Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations. Before furnishing any transportation, the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished. Amounts paid to the United States to reimburse it for the actual costs of transportation furnished will be credited to the current applicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.

Executive Order 12715, May 3, 1990, 55 FR 19051, discusses the cooperation and assistance authorized by section 2606(a) of title 10, and requires the Secretary of Defense to issue regulations concerning support.

## II. Summary of the Major Provisions of the Regulatory Action in Question

This rule discusses the types of support DoD installation commanders are authorized to provide, ensures appropriated fund (APF) and non-appropriated fund (NAF) assets are used correctly, and requires the cost of the support provided to be shared by each of the Military Services in proportion to benefits derived by their members from overseas scouting programs.

## III. Costs and Benefits

Program costs are less than \$700,000 per year, consisting primarily of salaries, transportation costs, and supplies to support scouting programs that directly complement and improve quality of life programming for military families overseas.

## **Retrospective Review**

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at: <http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

**Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a nonsignificant regulatory action and not economically significant under section 3(f) of Executive Order 12866. The rule has been reviewed by the Office of Management and Budget (OMB).

**Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This interim final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

**Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

This rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

This rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, “Federalism”**

DoD has determined this final rule would not have federalism implications under Executive Order 13132. It does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 252

Military installations, Military personnel, Scout organizations.

Accordingly 32 CFR part 252 is added to read as follows:

**PART 252—PROFESSIONAL U.S. SCOUTING ORGANIZATION OPERATIONS AT  
U.S. MILITARY INSTALLATIONS OVERSEAS**

Sec.

252.1 Purpose.

252.2 Applicability.

252.3 Definitions.

252.4 Policy.

252.5 Responsibilities.

252.6 Procedures.

Authority: E.O. 12715, May 3, 1990, 55 FR 19051; 10 U.S.C. 2606, 2554, and 2555.

**§252.1 Purpose.**

This part updates policy and outlines fiscal and logistical support that the DoD may provide to qualified scouting organizations operating on U.S. military installations overseas.

### **§252.2 Applicability.**

This part applies to 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 the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as “the DoD Components”).

### **§252.3 Definitions.**

These terms and their definitions are for the purposes of this part.

DoD personnel and their families. Members of the Military Services and their family members and DoD civilian employees and their family members.

Military Services. The Army, Navy, Air Force, and Marine Corps.

Qualified scouting organization. The Girl Scouts of the United States of America (GSUSA) and the Boy Scouts of America (BSA).

Sponsored organization or sponsored council. Scouting organizations or councils authorized to operate as scouting affiliates on military installations.

### **§252.4 Policy.**

It is DoD policy to cooperate with and assist qualified scouting organizations in establishing and providing facilities and services, within available resources, at locations outside the United States to support DoD personnel and their families in accordance with 10 U.S.C. 2606, 2554, and 2555 and Executive Order 12715, “Support of Overseas Scouting Activities for Military Dependents”.

### **§252.5 Responsibilities.**

- (a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) oversees development and implementation of this part.
- (b) The DoD Component heads implement this part and comply with its provisions.
- (c) In addition to the responsibilities in paragraph (b) of this section and acting as the DoD Executive Agent for DoD support to the BSA and GSUSA local councils and organizations in areas outside of the United States in accordance with 32 CFR part 212, the Secretary of the Army:
  - (1) Makes policy determinations in coordination with the other Military Department Secretaries regarding topics including, but not limited to, support that:
    - (i) DoD installation commanders are authorized to provide to the scouting program and personnel.
    - (ii) The scouting organization provides to DoD.
  - (2) Ensures accountability for appropriated fund (APF) and non-appropriated fund (NAF) assets used in the support of qualified scouting organizations.
  - (3) Provides input for and works with the scouting organizations in establishing the extent and scope of the annual scouting programs in support of DoD personnel and their families within the parameters established in this part and available resources.
  - (4) Ensures that the cost of the support provided is shared by each of the Military Services in proportion to benefits derived by their members from scouting programs overseas.

**§252.6 Procedures.**

- (a) General guidance. (1) Support provided by DoD and services provided by qualified scouting organizations is documented in a written agreement and signed by the appropriate regional combatant commander or designee. Installation-specific support and services are

documented in a written agreement and signed by the installation commander or designee. This agreement replaces the need for qualified scouting organizations to submit individual articles of incorporation, written constitutions, charters, or articles of agreement to gain approval from the installation commander to operate on the installation as required by 32 CFR part 212.

(2) Overseas installation commanders may authorize DoD support for qualified scouting organizations outside the United States when:

(i) Support is permitted under international agreements with the host nation, if applicable.

(ii) Support is permitted pursuant to law and DoD issuances.

(iii) Such support is within the capabilities of their respective installations.

(iv) Providing such support will not impede fulfillment of the military mission.

(3) Committees composed of representatives of the Military Services will be formed to review annual qualified scouting organization budget requirements.

(4) Overseas scouting committees will provide the overseas scouting organizations with information on the scouting requirements of DoD personnel and will monitor and evaluate the scouting organizations' efforts to satisfy those requirements.

(5) Funds raised by the scouting organizations, as a non-Federal entity, cannot be commingled with NAF funds and will be made available for annual audits.

(6) Employees of a qualified scouting organization are not considered to be U.S. Government employees, or employees of an instrumentality of the United States for the purpose of benefits or entitlements.

(i) APF and NAFs are not used to reimburse their salaries and benefits.

(ii) They are not entitled to participate in the NAF retirement fund.

(iii) Serving in those positions does not constitute NAF employment credit or produce rehire priority.

(7) These organizations generally are not covered under the terms of United States' Status of Forces or other relevant agreements with host nations.

(i) Questions regarding whether they are covered under such agreements should be referred to the legal office servicing the applicable command. Applicability of any relevant agreements would be addressed with the host nation only by the applicable command, and not the organization.

(ii) To the extent the organization is not covered under any relevant agreement, host nation laws apply. In all cases, the host nation will determine the scope and extent of the applicability of host nation laws to these employees.

(b) Funding guidance. (1) Any APF and NAF support provided will be programmed and approved on an annual basis by the DoD Components. NAF support is authorized for youth activities programs in accordance with DoD Instruction 1015.15, "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources" (available at <http://www.dtic.mil/whs/directives/corres/pdf/101515p.pdf>) and for qualified scouting organizations in accordance with paragraph (b)(5) of this section.

(2) APF may be used in conjunction with overseas scouting organizations. The following services may be provided on a non-reimbursable basis:

(i) Transportation of executive personnel (to include household goods and baggage) of qualified scouting organizations:

(A) When on invitational travel orders.

(B) To and from overseas assignments.

(C) While providing scouting support to DoD personnel and their families. Transportation of supplies of qualified scouting organizations necessary to provide such support may also be provided.

(ii) Office space where regular meetings can be conducted, and space for recreational activities.

(iii) Warehousing.

(iv) Utilities.

(v) Means of communication.

(3) DoD may provide the following additional support to scouting executives assigned overseas:

(i) Pursuant to section API 3.18 of DoD 4525.6-M, "Department of Defense Postal Manual" (available at <http://www.dtic.mil/whs/directives/corres/pdf/452506m.pdf>), access to use Military Services postal services is authorized.

(ii) Pursuant to section 4.3.2.2.2 of Department of Defense Education Activity Regulation 1342.13, "Eligibility Requirements for Education of Elementary and Secondary School-age Dependents in Overseas Areas" (available at <http://www.dodea.edu/Offices/Regulations/index.cfm>), access to DoD Dependents Schools (overseas) may be provided on a space-available, tuition-paying basis.

(iii) Pursuant to 32 CFR part 230, use of military banking facilities operated under DoD contracts is authorized.

(iv) Pursuant to DoD Instruction 1015.10, "Military Morale, Welfare, and Recreation (MWR) Programs" (available at <http://www.dtic.mil/whs/directives/corres/pdf/101510p.pdf>), the use of morale, welfare, and recreation programs may be provided.

(v) Pursuant to 32 CFR part 161, medical care in uniformed services facilities on a space-available basis at rates specified in uniformed services instructions, with charges collected locally, is authorized.

(vi) Pursuant to Office of Management and Budget Circular A-45, "Rental and Construction of Government Quarters" (available at [http://www.whitehouse.gov/omb/circulars\\_a045](http://www.whitehouse.gov/omb/circulars_a045)) and subparagraph 2.c(1)(e) of DoD 4165.63-M, "DoD Housing Management" (available at <http://www.dtic.mil/whs/directives/corres/pdf/416563m.pdf>), when DoD-sponsored civilian personnel serving DoD military installations at foreign locations cannot obtain suitable housing in the vicinity of an installation, they and their families may occupy DoD housing on a rental basis. The Military Service determines the priority of such leasing actions. These civilians are required to pay the established rental rate in accordance with DoD 4165.63-M and Military Service guidance.

(vii) Pursuant to DoD Instruction 1330.17, "DoD Commissary Program" (available at <http://www.dtic.mil/whs/directives/corres/pdf/133017p.pdf>), overseas installation commanders or Secretaries of the Military Departments may extend commissary access through official support agreements.

(viii) Pursuant to DoD Instruction 1330.21, "Armed Services Exchange Regulations" (available at <http://www.dtic.mil/whs/directives/corres/pdf/133021p.pdf>), the Secretaries of the Military Departments may grant Armed Forces Exchange deviations with regard to authorized patron privileges for individuals or classes and groups of persons at specific installations when based on alleviating individual hardships.

(4) NAF may be used in conjunction with qualified scouting organizations to:

(i) Reimburse for salaries and benefits of employees of those organizations for periods during which their professional scouting employees perform services in overseas areas in direct support of DoD personnel and their families.

(ii) Reimburse travel to and from official meetings of the overseas scouting committee upon approval from the appropriate combatant commander.

(5) The total amount of NAF support for the scouting program must not exceed 70 percent of the total cost of the scouting program.

Dated: January 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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