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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 637

RIN 0702-AA72

[Docket No. USA-2016-HQ-0017]

Law Enforcement Operations and Investigations

AGENCY: Department of the Army, DoD.

ACTION: Proposed Rule.

SUMMARY: The Department of the Army proposes to revise its regulation concerning policies and procedures for the conduct of Army law enforcement operations and investigations. This regulation was last published in the Federal Register on June 22, 2005 (70 FR 36029). At that time, the entire regulation was codified. The proposed revisions remove a large portion of the currently codified part that does not apply to the public and is now included in DoD internal guidance. The proposed revision also adds guidance on the requirements for the detention of civilians by Army law enforcement to fill a void in published guidance.

DATES: Consideration will be given to all comments received by: [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments, identified by 32 CFR Part 637, Docket No. USA-2016-HQ-0017 and or RIN 0702-AA72, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at

<http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Pearce, (703) 695-8499.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This regulation applies to the active component Army and U.S. Army Reserve, Department of the Army Civilian Police, Department of the Army Civilian Detectives, Department of the Army Security Guards, contracted or contractor security force operations (such as detector dog support), Family members, Department of the Army Civilians, and other personnel on Army installations. It also applies to the Army National Guard of the United States when Federalized under Title 10, United States Code. This regulation is required for unit personnel preparing for mobilization and deployment.

The internal guidance is available in AR 190-30, Military Police Investigations, and can be found at

<http://www.apd.army.mil/Search/ePubsSearch/ePubsSearchForm.aspx?x=AR>. This regulation discusses policies for conducting law enforcement and specified security

operations on Army installations, facilities and activities. Compliance with this regulation assures consistent delivery of protection, law enforcement, and safety assistance to Soldiers, Family members, Department of the Army Civilians, and other personnel on Army installations.

The Army recognized there is a void in internal guidance concerning the conduct of law enforcement operations on installations. As a result, the Army revised AR 190-30, which includes guidance on the operation of detention cells and detention of civilians. Due to the subject matter's impact on the public, the Army is proposing to add provisions in the CFR concerning Detention Cell Operations which provide guidance on the detention of military and civilian personnel by Army law enforcement.

This rule will be included in DoD's retrospective plan, completed in August 2011, and will be reported in future status updates of DoD's retrospective review in accordance with the requirements in Executive Order 13563. DoD's full plan can be accessed at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

AUTHORITY FOR THIS REGULATION

The legal authority for this action is 10 USC 807 – Article 7, Apprehension. This article specifically covers the authority for apprehension or taking of a person into custody.

COSTS AND BENEFITS

This rule will have no monetary effect upon the public as it only directs Army law enforcement and installation leadership's efforts in the conduct of their operations. Their efforts under this guidance ensure the effective employment of police and security forces to assist, protect, and defend the communities they serve on Army installations.

Regulatory Flexibility Act

The Department of the Army certifies that the proposed rule is not subject to the Regulatory Flexibility Act because the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

Unfunded Mandates Reform Act

The Department of the Army determined that this rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of \$100 million or more.

National Environmental Policy Act

The Department of the Army has determined that this rule is not covered under the National Environmental Policy Act because the rule does not have a significant impact on the environment.

Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule does not involve collection of information from the public.

Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights):

The Department of the Army has determined that Executive Order 12630 does not apply because the rule does not impair private property rights.

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review):

Although this rule is not “economically significant” because it does not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, it has been deemed “other significant” for raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders. For that reason, it has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13045 (Protection of Children from Environmental Health Risk and Safety Risks):

The Department of the Army has determined that Executive Order 13045 does not apply because this substantive action in rulemaking is neither economically significant nor does the action concern the environmental health or safety risks to children.

Executive Order 13132 (Federalism):

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this rule does not apply because it will not have a substantial 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 637

Law enforcement. Law enforcement officers. Law enforcement operations.

Detention Operations.

Thomas S. Blair

Chief, Law Enforcement Branch

For reasons discussed in the preamble, the Department of the Army proposes to revise 32 CFR part 637 as follows:

PART 637 - Law Enforcement Operations and Investigations

Subpart A – Detention Cell Operations

Sec.

637.1 Objective and policy.

Subpart B – [Reserved]

Authority: 10 USC 807

Subpart A – Detention Cell Operations.

§ 637.1 Objective and policy.

(a) Objective. Every effort will be taken to ensure that detained personnel remain in custody only when necessary. Persons will remain in custody for minimum periods, under proper supervision. All persons in custody are treated in a humane manner and in an environment which will not impair their health or subject the detainee to unreasonable discomfort.

(b) Policy. Military and civilian personnel apprehended by military police may be detained in a military police detention cell (D-cell) only when necessary to prevent escape or to ensure safety of the detainee or others.

(1) Detention of civilian personnel not subject to the UCMJ is authorized only while the civilian personnel are pending release to civilian authorities. Detention of civilian personnel will be done only in the case of a serious felony and when the individual is a flight risk, or is a risk to self or others, and must be approved by a commissioned officer designated by the senior commander. In no case will detention exceed 12 hours.

(2) Male and female personnel will not be detained in the same cell simultaneously.

(3) The use of other military service or civilian detention facilities to detain personnel in police custody is authorized. When other military service facilities are used, the time limitations and other procedures described above apply. Only those civilian facilities that have been evaluated by the U.S. Marshal Service and deemed appropriate for use will be utilized.

(4) Juveniles will not be detained in Army LE D-cells.

Subpart B – [RESERVED]

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