

Office of the Secretary of Defense

§ 238.6

is contained in DoD Instruction 5435.2,¹ "Delegation of Authority to Approve Travel In and Use of Military Carriers for Public Affairs Purposes," April 25, 1975.

§ 238.5 Procedures.

(a) Within basic legal and policy limitations, commanders at all levels who plan or conduct a community relations program shall consider initially:

(1) The interests of the Department of Defense and the community as a whole.

(2) Pertinent operational requirements.

(3) The availability of adequate and appropriate resources.

(b) When a proposed community relations program exceeds local support capability or the scope of local public affairs responsibility, it shall be referred, via command channels, to the appropriate higher echelon. The proposal shall contain, as a minimum:

(1) A description of the program;

(2) A list of support requirements;

(3) A description of the anticipated scope of the program;

(4) Comments concerning expected community reactions; and

(5) Appropriate recommendations.

(c) All DoD Components shall use approved DoD request formats, appended as various enclosures to this part, in processing requests by civilian sponsors for Armed Forces support of community relations programs. These formats, which may be reproduced locally, provide sufficient information to permit the approving authority to:

(1) Evaluate the appropriate degree of Armed Forces support, and

(2) Determine compliance with the requirements of this part.

(d) To ensure that a proposed community relations program conforms to the limitations imposed by public law and by policy contained in part 237 of this title, the following aspects of the program shall be evaluated (using the criteria set forth in § 238.6.)

(1) The objectives and purposes of the program ("*program criteria*").

(2) The interests and objectives of the sponsor or sponsoring group ("*sponsor criteria*").

(3) The nature or character of the location of the program ("*site criteria*").

(4) The full particulars of DoD support ("*support criteria*").

§ 238.6 Guidelines.

(a) The Department of Defense authorizes and encourages support of community relations programs when at least one of the conditions listed in each of the following criteria categories (program, sponsor, site, and support) is met:

(1) *Program criteria*. When the program is:

(i) Specifically authorized or directed by public law, executive order, or the Secretary of Defense.

(ii) An official Federal Government, military, or civil ceremony or function.

(iii) An event or occasion of general interest or benefit to a local, State, regional, or national community, and is available to the community.

(iv) In support of authorized recruiting or personnel procurement programs.

(v) In support of:

(A) United, federated or joint fund-raising campaigns authorized by DoD Directive 5035.1,¹ "Fund-Raising Within the Department of Defense, April 7, 1978;

(B) Such fund-raising appeals as the President or the Director of the Office of Personnel Management may authorize; or

(C) The Military Service Aid societies.

NOTE: DoD support for local fund-raising programs, other than those described above, is authorized only when the fund-raising program is local in nature, is of community-wide interest and benefit, and has the support of endorsement of the local united, federated, or joint campaign officials; or when, in the judgment of the local commander, support of a purely local charitable drive is part of the responsible role of the military installation in the local community. Volunteer fire department, rescue unit, or youth activity fund drives are examples of such local programs.

¹See footnote 1 to § 238.4(d).

¹ Copies may be obtained, if needed, from U.S. Naval Publications and Forms Center, 5801 Tabor Ave., Philadelphia, Pa., 19120, Attn: Code 301.

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(vi) In support of fund-raising campaigns solely for the benefit of U.S. teams competing in the Pan American Games or the Olympic Games (see DoD Directive 1330.4,¹ "Participation in Interservice National and International Sports Activities," November 14, 1968).

(vii) Of a patriotic nature; or with the addition of military support, designed to include a patriotic acknowledgement; or the celebration of a Government-recognized local, State, regional, or national holiday.

(2) *Sponsor criteria.* The sponsor or sponsoring organization does not specifically exclude any person from its membership for reasons of race, creed, color, or national origin. DoD support is authorized for programs sponsored by organizations whose qualification for membership is based on sex or national origin only when the primary benefit and interest are to the community rather than to the organization. DoD support is authorized when the sponsor is:

(i) A local, State, or Federal Government.

(ii) A veteran's, Military Service-related, patriotic, or historical organization or auxiliary.

(iii) An organization (civic, service, youth, professional, educational, business, trade, or labor) whose interests are in support of the community.

(iv) A commercial enterprise *only* when:

(A) DoD support is patriotic in nature, is incidental to the program, and does not benefit selectively nor appear to benefit selectively the commercial activity of the sponsor;

(B) The sponsor's role is clearly civic in nature; and

(C) The commercial interest is subordinate to the community interest, and benefit in the program.

(v) A public school, public college, or public university.

NOTE: Support is authorized for programs sponsored by nonpublic schools, colleges, or universities only when the program is (A) of a community-wide nature of common interest and benefit, is open to all, and is broadly publicized; or (B) when the program is clearly patriotic or educational in nature or is in support of recruiting programs.

(3) *Site criteria.* Admission, seating, and all other accommodations and site

facilities connected with any public programs are available to all without regard to race, creed, color, national origin, or sex, and the location of the program is:

(i) A military installation.

(ii) A local, State, or Federal Government property, facility or building.

(iii) A bona fide community center.

(iv) A private or commercial building *only* when DoD support is patriotic in nature, is incidental to the program, and does not benefit selectively nor appear to benefit selectively the owner of the building or the agent.

(v) A religious building or facility *only* when the program is of a community-wide, nonsectarian nature of common interest and benefit and is broadly publicized.

(vi) A shopping mall or center *only* when the program is a recruiting program, and:

(A) The support is directly related to the recruiting activities taking place, and the type and amount of support are commensurate with the scope and nature of the recruiting activity.

(B) Community relations support is not advertised, promoted, or presented as an attraction for the center or mall (or for special business activities such as promotional sales).

(C) The support activities are in no way related, nor do they appear to be related, to a particular business or particular group of business establishments within the mall or center.

NOTE: Because of the commercial nature of shopping malls and centers, special care must be exercised to avoid the selective benefit of specific business interests. Where two or more such centers or malls are part of a community, support of recruiting activities must be administered in an even-handed manner, with fairness and extreme care.

(4) *Support criteria.* The Department of Defense authorizes support which:

(i) Can be reasonably expected to bring credit to the individuals involved and to the Armed Forces and is at no additional cost to the Government; or

(ii) Is specifically authorized to be at Government expense by this part (§238.7), by public law, by executive order, or by the Secretary of Defense.

(b) The Department of Defense does *not* authorize support of community relations programs when any one of the

conditions listed in one of the following criteria categories exists.

(1) *Program criteria.* When the program is:

(i) Intended or appears to endorse, benefit selectively, or favor any private individual, group corporation, religion, sect, ideological movement, political organization candidate, or commercial venture.

(ii) For the purpose of solicitation of votes in a political election.

(iii) A commercially oriented program, such as a Christmas parade, a motion picture premiere, a fashion show, a beauty pageant, or any other event or activity conducted to stimulate sales or increase the flow of business traffic.

(iv) For the purpose of raising funds for causes other than those specified in paragraph (a)(1)(v) of this section.

(v) One in which public confrontation is planned or likely or where the real or apparent purpose is to stage controversy.

(2) *Sponsor criteria.* The sponsor or sponsoring organizations specifically excludes any person from its membership for reasons of race, creed, color, or national origin.

(i) A commercial enterprise (except as specified in paragraph (a)(2)(iv) of this section).

(ii) A religious group (except for a school, as specified in paragraph (a)(2)(v) of this section, sect, or partisan political organization, or ideological movement).

(iii) An organization whose constitution, bylaws, membership qualifications, or ritual is privately held and not available to the general public (e.g., many fraternal organizations).

(3) *Site criteria.* When:

(i) Admission, seating, and any other accommodation or facility connected with a public program are barred to any person because of race, creed, color, national origin, or sex.

(ii) The location of the program is a private, commercial, or religious facility, a shopping mall or center, or a nonpublic school, college, or university (except as specified in paragraph (a)(3) of this section).

(4) *Support criteria.* When DoD support:

(i) Has been determined, by a finding of fact, to interfere with the customary or regular employment of non-DoD persons in their art, trade, or profession.

(ii) Is or could be considered to be the primary or major attraction for which admission is charged, except for:

(A) Athletic events of the Military Service academies;

(B) Performances by aerial demonstration teams;

(C) Concerts by the U.S. Army Band, the U.S. Army Field Band, the U.S. Navy Band, the U.S. Marine Band and the U.S. Air Force Band while on authorized tours.

(iii) Consists wholly or in part of resources, facilities, or services which are otherwise reasonably available from commercial sources.

(iv) Involves the use of military personnel (including members of Guard/Reserve components and ROTC in uniform) outside military reservations as ushers, guards, parking lot attendants, runners, messengers, baggage handlers, for crowd control, or in any other inappropriate capacity.

(v) Interferes with military needs or operational requirements.

§ 238.7 Funding.

(a) The cost of DoD support of community relations programs authorized in § 238.7(b) shall be the responsibility of the DoD Component(s) involved. Funding requirements for these purposes shall be kept to the minimum necessary to accomplish DoD objectives.

(b) DoD Components shall absorb the costs of supporting those community relations programs that are specifically authorized by public law, executive order, or the Secretary of Defense, and the following types of programs when they are in the primary interest of the Department of Defense:

(1) Official Federal Government functions.

(2) DoD or civic-sponsored observances of United States or host country national holidays.

(3) Official civil ceremonies and functions.

(4) Speaking engagements.

(5) Events considered to be in the national interest or in the professional, scientific, or technical interests of a