

NGAR REG 2015-01

**Operating and Parking
Vehicles on State
Military Reservations**

MILITARY DEPARTMENT OF ARKANSAS
OFFICE OF THE ADJUTANT GENERAL
Camp Joseph T. Robinson
North Little Rock, AR 72112-2200
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OPERATING AND PARKING VEHICLES ON STATE MILITARY RESERVATIONS

This regulation is established in accordance with the Arkansas Administrative Procedure Act (Act), Ark. Code Ann. §§ 25-15-201 et seq.:

Official:

Major General
The Adjutant General

State Judge Advocate

History. This is the first regulation established to govern this topic.

Summary. This regulation implements Act No. 895 of 1979, as amended. It includes changes through the 2015 legislative session.

Applicability. This regulation applies to all persons operating vehicles on military reservations, as that term is defined under Ark. Code Ann. § 12-63-201.

Proponent and exception authority. The proponent of this regulation is the Arkansas State Judge Advocate. The State Judge Advocate has the authority to approve

exceptions or waivers to this regulation that are consistent with controlling law and regulations.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the State Judge Advocate.

Distribution. This publication is available in electronic media. Special distribution of this publication in paper will be made through channels to all levels of command in the Arkansas Army National Guard.

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CHAPTER 1

Introduction

1-1. Authority

This regulation is created pursuant to authority granted to the Adjutant General by the Arkansas Legislature through the adoption of Act No. 50 of 1969, Act 895 of 1979, and Act 682 of 2015 (codified at Ark. Code Ann. §§ 12-61-106, 12-63-207, and 12-63-208, respectively).

1-2. Purpose

The purpose of this regulation is to ensure the safe and orderly operation of motor vehicles on state military reservations. This regulation supplements existing state laws with additional measures that are intended to safeguard military personnel and property from avoidable loss. The civil penalties provided in this regulation are intended to enforce compliance. They are not intended to generate revenue. To the extent that revenue is generated from civil penalties in an amount exceeding the costs associated with implementing this regulation, such revenue shall be exclusively used for the costs associated with: (a) policing state military reservations; (b) military justice; or (c) morale, welfare, and recreation programs on state military reservations.

1-3. Privilege to Enter Military Reservations

It is a privilege, not a right, to enter a state military reservation. Similarly, it is a privilege, not a right, to operate a motorized vehicle on a state military reservation. As provided in Section 3-4 herein, any person who repetitiously or egregiously fails, or refuses to adhere to this regulation, or is otherwise perceived to endanger the safety of military personnel or property, may be denied the privilege of operating a motorized vehicle on state military reservations, or the privilege of entering state military reservations at all.

1-4. Persons Subject to the Military Code of Arkansas

This regulation constitutes a lawful order given by the Adjutant General for all persons under his command. This regulation is punitive in nature. Any person suspected of violating this regulation while subject to the Military Code of Arkansas (Act No. 50 of 1969, as amended) may be prosecuted under state military authority, *and* as provided under Section 1-5.

1-5. Persons Not Subject to the Military Code of Arkansas

This regulation constitutes the lawful exercise of administrative controls over all persons entering state military reservations. Any person suspected of violating this regulation may be cited under the administrative procedures provided in this regulation, *or* according to applicable laws of the state of Arkansas.

1-6. Responsibilities

a. Commanders of state military reservations are responsible for implementing this regulation within their respective jurisdictional areas, as directed by the Adjutant General, to include:

- (1) Erecting signage and distributing pamphlets to reasonably communicate the requirements contained in this regulation to persons operating motor vehicles within the commander's jurisdictional area;
- (2) Coordinating effort among other persons who have responsibilities under this regulation; and
- (3) Periodically reporting to the Adjutant General regarding the number of administrative citations issued, disposition, and other relevant matters.

b. The State Judge Advocate is responsible for ensuring that administrative hearings and procedures conducted under this regulation are fair and in accordance with applicable law.

c. Military reservation police officers are responsible for enforcing this regulation and maintaining documents evidencing enforcement activity consistent with such standard operating procedures as may be established by the military reservation commander and approved by the Adjutant General.

d. The Director of the Department of State Resources is responsible for ensuring proper accountability of funds received or disbursed under this regulation.

e. Each military reservation commander is responsible for periodically reviewing this regulation and recommending such changes as may be necessary or advisable to ensure the safety of military personnel and property.

1-7. Directions for Implementation

This regulation shall be implemented at Camp Joseph T. Robinson Maneuver Training Center and the Fort Chaffee Joint Maneuver Training Center which are defined as military reservations in Ark. Code Ann. § 12-63-202-204

CHAPTER 2 Definitions

2-1. Gender references

Where context requires, the use of masculine pronouns shall be interchangeable with the feminine and vice-versa.

2-2. Motorized Vehicle and General Traffic Terms

The definitions found in Ark. Code Ann. § 27-23-103 are incorporated throughout this regulation.

2-3. Motorcycle, Motor-driven cycle, and Motorized bicycle

The definitions found in Ark. Code Ann. § 27-20-101 relating to motorcycles, motor-driven cycles, and motorized bicycles are incorporated throughout this regulation.

2-4. All-Terrain Vehicles

The definitions found in Ark. Code Ann. § 27-21-102 relating to Terms relating to all-terrain vehicles (also called “ATVs”) are incorporated throughout this regulation.

2-5. Military Reservation Police Officers

The definition found in Ark. Code Ann. §§ 12-63-201 is incorporated throughout this regulation.

2-6. Military Reservation

The definitions found in Ark. Code Ann. § 12-63-202-204 are incorporated throughout this regulation.

2-7. Military Terms and Abbreviations

Military terms and abbreviations are given the meaning customarily used within the Arkansas National Guard and the United States Army. Military justice terms defined by the Military Code of Arkansas are used throughout this regulation and have the meaning assigned by state law.

CHAPTER 3 Administrative Disposition of Violations

3-1. General

This regulation serves as a guide to administratively dispose of minor traffic and parking violations in a manner consistent with state law; particularly, Act No. 895 of 1975, as amended (codified at Ark. Code Ann. § 12-63-207 and 208). This regulation governs the operation and parking of all motorized vehicles, both civilian and military, on state military reservations, regardless of the military status of the operator. This regulation does *not* govern the operation or parking of military vehicles outside of state military reservations.

3-2. Violations Not Subject to Administrative Disposition

The decision to issue an administrative citation, in lieu of other process, rests in the discretion of the military reservation police officer, in accordance with the ethical duties of his profession. However, certain offenses may *not* be disposed of administratively due to the severity of the violation, logistical demands, or preemptive law. The following categories of violations are *not* subject to administrative disposition:

- a. any conduct that would constitute reckless driving, ref: Ark. Code Ann. § 27-50-308;
- b. any offense cognizable under the Omnibus DWI Act, ref: Ark. Code Ann. § 5-65-101, et seq.;
- c. any offense conducted in concert with a felony offense;
- d. any offense resulting in damage to property or injury to persons;
- e. any offense related to state licensing, registration, or insurance requirements; and
- f. any offense committed by a person possessing a commercial driver's license.

Although these offenses are not subject to disposition through administrative citation, disposition through an alternative method, as identified in section 3-3 below, is appropriate.

3-3. Alternative Remedies

- a. *Uniform Traffic Citation.* In lieu of issuing an administrative citation, a military reservation police officer may elect, in his or her sole discretion, to issue a uniform traffic citation for prosecution in the District Court having jurisdiction over the offense.
- b. *Persons subject to the Military Code of Arkansas.* Any persons who violates this regulation while subject to the Military Code of Arkansas may also face disciplinary action under the Military Code of Arkansas.

c. *Restrictions upon Driving or Entry.* As an *additional* remedy to the penalties provided herein, any person who repetitiously or egregiously fails, or willfully refuses to adhere to this regulation, or is otherwise perceived to endanger the safety of military personnel or property, may be barred from entering state military reservations or from operating a motor vehicle on state military reservations.

- (1) The senior military reservation police officer will forward recommendations for suspension of entry or driving privileges to the military reservation commander for an initial hearing and determination.
- (1) The military reservation commander, or his designee, shall expeditiously review the evidence and initially determine whether the person referred should be:
 - (A) Suspended from entering the state military reservation; or
 - (B) Suspended from driving on the state military reservation.
- (2) The military reservation commander's initial determination shall be:
 - (A) Communicated to the person referred; and
 - (B) Forwarded to the Adjutant General for final action.
- (3) Unless the military reservation commander states otherwise, an initial determination shall be enforced while pending review by the Adjutant General.
- (4) The Adjutant General may reverse, uphold, or modify the initial determination of the military reservation commander. The decision of the Adjutant General shall be the final determination of the Arkansas National Guard and State Military Department.
- (5) Every determination suspending a person from entering or driving upon a state military reservation shall indicate the duration thereof, which shall not exceed two (2) years, unless reexamined to validate the necessity of the suspension.
- (6) Any person who violates an order of suspension may be prosecuted for trespass and such other offenses as may be applicable.
- (7) The procedures provided in this section are intended to provide a guide for hearing suspension referrals from military reservation police officers. These procedures are **not** intended to create procedural rights in any person. Most importantly, these procedures are not intended to restrict the plenary authority of the Adjutant General over state military reservations and access thereto.

d. *Towing.* As an *additional* remedy to the penalties provided herein, a military reservation police officer may cause a vehicle to be towed, with or without the consent of the vehicle's owner, when the vehicle is unattended or abandoned (as defined in Ark. Code Ann. § 27-50-1202), inoperable, illegal, or otherwise poses a safety hazard to others. The owner of the towed vehicle shall be liable for the costs of towing. When reasonably possible, vehicle owners should be allowed to remove their vehicle from the state military reservation prior to nonconsensual towing.

3-4. Administrative Citations

The system of administrative disposition is initiated by the issuance of an administrative citation to the operator of a vehicle on a military reservation.

a. *Form.* The form of the citation shall be approved by the military reservation commander and the State Judge Advocate. The citation shall reasonably identify the person receiving the citation, and inform him or her of:

- (1) The nature of the violation;
- (2) The time and place of an administrative hearing to review the citation;
- (3) The amount of civil penalty that may be tendered in lieu of appearing;
- (4) The manner in which civil penalties may be tendered; and
- (5) The potential consequences for failing to resolve the citation.

b. *Duplicate Copies.* Each citation shall be prepared and issued in multipart form, with sufficient legible, identical copies, to provide one (1) copy to the operator, one (1) copy to the hearing officer, and one (1) copy to the keeper of records for the military reservation police office. Additionally, one (1) copy will be maintained in records of the military reservation police officer issuing the citation.

c. *Service.* The citation may be delivered to the vehicle operator in person, by posting on the operator's vehicle, or by mailing to the residence of the operator of the vehicle or vehicle owner. When service by mail is utilized, a copy of the citation shall be delivered to the named respondent, or an attorney of record for the respondent, by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee. No hearing officer may consider a citation served by mail unless:

- (1) the respondent appears, or
- (2) the record contains a return receipt signed by the addressee, or agent of the addressee.

3-5. Payment of Civil Penalty in Lieu of Appearance

Unless the face of the citation states otherwise, every person receiving an administrative citation may pay an administrative penalty of twenty-five dollars (\$25.00) per violation in lieu of appearing before an administrative hearing officer.

3-6. Administrative Hearing

At the time and place indicated on the face of the citation, an administrative hearing shall be held to determine whether the respondent violated this regulation and, if so, an appropriate civil penalty to encourage compliance.

- a. *Hearing officer.* The State Judge Advocate shall designate a person who is knowledgeable in the law to hear alleged violations of this regulation and render conclusive determinations.
- b. *Standard of proof.* There is a presumption that every person operating or parking a vehicle on a state military reservation does so in accordance with the law and this regulation. This presumption may only be rebutted by a preponderance of the evidence that a violation occurred.
- c. *Rules of evidence.* Hearings conducted under this regulation need not adhere to the Arkansas Rules of Evidence; rather, hearing officers should apply such rules in a manner that will encourage openness and fairness. Hearing officers are permitted to weigh evidence in light of its admissibility under the Arkansas Rules of Evidence.
- d. *Telephonic appearance.* The hearing officer is permitted to accept telephonic evidence when the hearing officer is adequately assured, in his or her own discretion, of the identity of the witness.
- e. *Continuances.* The hearing officer is authorized to continue cases from one day to another based upon fairness or other appropriate concerns.
- f. *Conduct of hearing.* Every hearing shall be conducted in such a manner to allow the presentation of evidence that is relevant and reliable. The presentation of evidence shall be orderly and shall conclude when the hearing officer determines, in his or her sole discretion, that sufficient evidence has been received to render a fair determination. Hearings shall be concluded when the hearing officer announces his or her determination.
- g. *Penalties.* If a hearing officer determines that a respondent violated this regulation, he or she shall announce the amount of penalty assessed, which shall not exceed one hundred dollars (\$100.00) per violation. Assessed penalties shall be paid in full immediately. Any person who does not pay an assessed penalty in full immediately upon determination shall be deemed to willfully disregard this regulation and shall be referred for suspension of access to or driving privileges on the state military reservation.
- h. *Appeal.* If a hearing officer determines that a respondent violated this regulation, he or she shall inform the respondent of the right to appeal to district court under state law.

3-7. Persons Failing to Appear

The hearing officer shall report through the State Judge Advocate to the Adjutant General, or his/her designee, the name of every person who failed to either: (a) pay a civil penalty in lieu of appearance before an administrative hearing (refer to Section 3.5) or (b) appear before an administrative hearing as described on the face of the citation. The State Judge Advocate will send a notice to the commander or civilian supervisor of any individual that failed to do either (a) or (b) above. Upon direction by the Adjutant General, or his/her designee, the State Judge Advocate shall reschedule a past hearing, or refer the citation directly to a district court exercising jurisdiction over the offense.

CHAPTER 4 Violations

4-1. General

The violations described in this chapter may be enforced administratively. Any ambiguity shall be interpreted in such a manner as to increase the safety of personnel and property on state military reservations. Some of these violations are unique to military reservations and are necessary for the safety of Servicemembers and for good order and discipline.

4-2. Unsafe Driving

Every person driving or operating a motor vehicle on a state military reservation shall maintain proper control of the vehicle in a manner consistent with state law, as well as the regulations stated herein. In addition to this general requirement, it is specifically prohibited for any person driving or operating a motor vehicle to:

- a. Maneuver at a speed or in a manner that, considering the totality of circumstances, is unsafe to the driver/operator or others;
- b. Pass a pedestrian or bicyclist in such a manner as to endanger the pedestrian or bicyclist;
- c. Pass a marching or running formation, unless permitted by signage or the leader of the formation;
- d. Pass a road guard, unless permitted by the road guard;
- e. Use any communication device, such as a cell phone, without the aid of a hands-free device; or
- f. Fail to use a seatbelt.

4-3. Unsafe Operation of Motorcycle

Every person driving or operating a motorcycle on a state military reservation shall wear proper safety equipment and shall maintain proper control of the motorcycle, in a manner consistent with state law, as well as the regulations stated herein. It is specifically prohibited for any person driving or operating a motorcycle to:

- a. Maneuver at a speed or in a manner that, considering the totality of circumstances, is unsafe to the driver/operator or others;
- b. Pass a pedestrian or bicyclist in such a manner as to endanger the pedestrian or bicyclist;
- c. Pass a marching or running formation, unless permitted by signage or the leader of the formation;
- d. Pass a road guard, unless permitted by the road guard;
- e. Fail to wear a helmet, reflective band, and other required equipment; or
- f. Use any communication device, such as a cell phone, without the aid of a hands-free device.

4-4. Unsafe Operation of Other Motorized Vehicles

Every person driving or operating ATVs, or other motorized vehicles not regulated under sections 4-2 or 4-3 above, on a state military reservation shall wear proper safety equipment and shall maintain proper control of the vehicle, in a manner consistent with state law, as well as the regulations stated herein. It is specifically prohibited for any person driving or operating an ATV, or other motorized vehicle not regulated under sections 4-2 or 4-3 above, to:

- a. Maneuver at a speed or in a manner that, considering the totality of circumstances, is unsafe to the driver/operator or others;
- b. Pass a pedestrian or bicyclist in such a manner as to endanger the pedestrian or bicyclist;
- c. Pass a marching or running formation, unless permitted by signage or the leader of the formation;
- d. Pass a road guard, unless permitted by the road guard;
- e. Fail to wear required equipment; or
- f. Use any communication device, such as a cell phone, without the aid of a hands-free device.

4-5. Unauthorized Parking

It is prohibited for any person to park:

- a. In any parking place that is marked as reserved for another person, or in such a manner as to restrict access to a parking place that is reserved for another person;
- b. In a place that restricts the flow of traffic along a road or street;
- c. In a fire lane; or
- d. In violation of posted rules or policies.

4-6. Restricted Areas

It is prohibited for any unauthorized person to enter or unlawfully remain in a restricted area.

CHAPTER 5

Military Reservation Traffic Board

5-1. Military Reservation Traffic Board

- a. Each commander of a state military reservation will establish a military reservation traffic board to:
 - (2) Establish procedures for implementing this regulation;
 - (3) Propose changes to this regulation; and
 - (4) Request the expenditure of any funds obtained through implementation of this regulation.
- b. The military reservation traffic board shall consist of the following persons, or their respective representatives:
 - (1) Military reservation commander;
 - (2) Senior military reservation police officer;
 - (3) State Judge Advocate; and
 - (4) Director, Department of State Resources.
- c. The military reservation traffic board will meet at the discretion of the military reservation commander, but no less than once semi-annually.

5-2. Disbursement of funds

The military reservation commander may authorize, with coordination of the Director of State Resources, disbursement of funds obtained through implementation of this regulation in order to defray any cost associated with implementation. Additionally, upon recommendation of the military reservation traffic board, the military reservation commander may authorize, with coordination of the Director of State Resources, disbursement of funds obtained through implementation of this regulation for such other purposes as are authorized by this regulation. The Director of the Department of State Resources may designate the use of such forms as are appropriate to maintain accountability of funds.

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