



US Department of Homeland Security
Federal Protective Service



OPERATIONAL READINESS ORDER

Date: March 30, 2018
Report Number: HQ-ORO-002-2018
Source: FPS POD and OGC
Prepared By: Headquarters
Approved By: Director - FPS

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(U//FOUO) Photography and Videotaping Federal Facilities

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(U) BACKGROUND

(U//FOUO) Photography for news, advertising or commercial purposes is governed by 41 CFR 102-74.420. In October, 2010, FPS disseminated an FPS Information Bulletin (HQ-IB-012-2010) to the field addressing the photographing of the exterior of federal facilities. The purpose of the bulletin was to remind FPS personnel and PSOs that the public has the right to photograph the exterior of federal facilities from public forums. Since the publication of the bulletin, FPS has experienced an increase in the public's interest in photographing and videotaping both exterior and interior of federal facilities protected by FPS, to include individual's expressing their First Amendment-protected rights by intentionally photographing and videotaping the exterior and interior of a federal facility and law enforcement in the course of their duties to test FPS law enforcement and PSO response. Also, new case law impacts the interpretation and implementation of FPS enforced regulations.

(U//FOUO) To address this increase in photography and videotaping by the public, this Operational Readiness Order reiterates the 2010 guidance; provides clarification on the public's right to photograph publicly accessible federal facility building entrances, lobbies, foyers, corridors and auditoriums; and directs FPS law enforcement personnel and PSOs to maintain security without adversely impacting the public's rights relating to photography and videotaping.

(U) PHOTOGRAPHING THE EXTERIOR OF FEDERAL FACILITIES

(U//FOUO) For properties under the protective jurisdiction of FPS, there are currently no general security regulations prohibiting exterior photography of any federally owned or leased building, absent a written local rule or regulation established by a Court Security Committee or, in limited cases, a Facility Security Committee. Furthermore, it is important to understand that 41 CFR 102-74.420 does not prohibit photography by

individuals of the exterior of federally owned or leased facilities. Rather, this regulation describes when an individual may photograph the interior of federally buildings, i.e., "space occupied by a tenant agency" or "building entrances, lobbies, foyers, corridors, or auditoriums." **Therefore, absent reasonable suspicion or probable cause indicating criminal activity, law enforcement and security personnel must allow individuals to photograph the exterior of federally owned or leased facilities from publicly accessible spaces, such as streets, sidewalks, parks, and plazas even if federally owned or leased.**

(U//FOUO) This right includes the ability to photograph any exterior security countermeasures that are viewable to the public and can be photographed or videotaped from publicly accessible spaces.

(U//FOUO) This right includes the ability to photograph from exterior property under the control of the federal government such as sidewalks, plazas, and parking lots if such property is publicly accessible.

(U//FOUO) As a reminder, photography and videotaping, absent a criminal predicate, is a First Amendment protected activity. Mere photography or videotaping of the exterior of federal facilities without the presence of any other indicators of nefarious activity is not a reportable suspicious activity under the National Suspicious Activity Reporting Initiative (made through Suspicious Activity Reports (SARs)). DHS' Office of Civil Rights and Civil Liberty requires the photography or videotaping be performed in an unusual or surreptitious manner that would arouse suspicion of terrorism or other criminality in a reasonable person before conducting an investigative detention.

(U) PHOTOGRAPHING THE INTERIOR OF FEDERAL FACILITIES

(U) Title 41, Section 102-74.420 of the Code of Federal Regulations provides federal "policy concerning photographs for news, advertising or commercial purposes." It states, "Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of:

- a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;
- b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and
- c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes."

(U//FOUO//LES) In applying this regulation to FPS protected federal facilities, FPS law enforcement personnel and PSOs should consider the following information when contemplating enforcement of the regulation.

| REGULATION | APPLICATION |
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| "Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of..." | Photography and videotaping the interior of federal facilities is allowed under the conditions set forth in (a) – (c) of the regulation unless there are regulations, rules, orders, directives or a court order that prohibit it. |

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| | <p>For example, SSA has rules that prohibit photography and videotaping in its spaces. Similarly many courts issue no photography or videotaping in courtrooms and surrounding areas. The prohibition must be clearly posted or actual (in-person) notice must be given in order to be enforced.</p> |
| <p>"a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned"</p> | <p>Non-commercial photography and videotaping in space occupied by a federal tenant requires the verbal permission of the federal tenant. For example, a visitor to an Army Corps of Engineers office has verbal permission from the office manager to photograph the private promotion ceremony of a friend. A student is given verbal permission from the office manager to take photographs of the office for a school project.</p> |
| <p>"b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned"</p> | <p>Commercial photography and videotaping in space occupied by a federal tenant requires the written permission of the agency official authorized to approve commercial photography and videotaping. Journalists, news media, or other individuals photographing or videotaping for news purposes is not considered a commercial purpose. For example, a professional photographer has obtained written permission from the designated official at a building housing only Department of Interior offices to photograph architectural design work performed by one of the photographer's clients. A movie company is given written permission from the designated official to videotape a federal facility.</p> |
| <p>"c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes."</p> | <p>Due to the expansive use of social media, the vast majority of the public is considered to be gathering news, to include how the federal government functions. Recognizing this fact, the public is allowed to photograph interior building entrances, lobbies, foyers, corridors and auditoriums from publicly accessible areas. For example, someone can photograph in the common space and publicly accessible lobby of a federal facility. This includes videotaping any countermeasures including the security screening posts.</p> |

(U//FOUO//LES) If an individual is authorized to photograph or videotape the interior of a federal facility as discussed above, this right includes the ability to photograph or videotape any interior security countermeasures, including security screening posts, which are viewable to the public and can be photographed or videotaped from publicly accessible spaces.

(U//FOUO//LES) This right, however, does not authorize a photographer to intrude on restricted space surrounding a security post, create loud or unusual noises or cause a nuisance, obstruct the usual use of entrances, lobbies and other commonly accessible space, impede or disrupt the performance of official duties by government employees or federal contractors, including the PSOs, nor prevent the public from obtaining government services provided in the facility in a timely manner.

(U//FOUO//LES) GUIDANCE FOR FPS LAW ENFORCEMENT OFFICERS ENCOUNTERING INDIVIDUALS TAKING PHOTOGRAPHS OF THE EXTERIOR AND INTERIOR OF FEDERAL BUILDINGS:

- Observe the individual's actions until such time that you believe that a Field Interview (FI) is warranted. Remember that the public has a right to photograph the exterior of federal facilities from publicly accessible spaces such as streets, sidewalks, parks and plazas.
- Approach the individual taking the photographs.
- Identify yourself.
- Conduct a FI to determine the purpose for taking photographs of the facility and endeavor to ascertain the identity of the individual. Note that such encounters are voluntary contacts, not detentions. Thus, the individual does not have to answer any of your questions or identify him or herself. A photographer may not be detained unless, and until, the officer develops reasonable suspicion (for a brief Terry Stop) or probable cause (for an arrest).
- Because the initial interview is voluntary, officers should not seize the camera or its contents, and must be cautious not to give such "orders" to a photographer to erase the contents of a camera, as this constitutes a seizure or detention.
- If the field interview does not yield a reasonable belief of criminal behavior or terrorist activity, the photography should be permitted to proceed unimpeded.
 - If the field interview does yield a reasonable belief of criminal behavior or terrorist activity, take appropriate police action; notify the FPS MegaCenter and your supervisor.
- All contact with the public, including photographers, must be conducted in a professional and polite manner. FPS personnel should not be distracted from their duties by engaging in assisting the photographic effort (posing for or taking a picture).
- People photographing federal property cannot impede law enforcement operations or ingress/egress of people or vehicles entering the facilities. If an individual does this, the FPS LEO may ask the person to move and videotape or photograph from a different area but should avoid ordering the individual to completely stop videotaping or photographing. If necessary to carry out their duties in a safe and effective manner, LEOs may temporarily restrict access to an area, usually by employing Police Line tape (see FPS Directive # 15.5.2.1, High Volume Arrest).
 - Be aware that some individuals photographing or videotaping federal facilities for purposes of testing law enforcement response to a First Amendment-protected activity are very knowledgeable about the First Amendment and government regulations pertaining to photography and videotaping.

(U//FOUO//LES) GUIDANCE FOR PSO'S ENCOUNTERING INDIVIDUALS TAKING PHOTOGRAPHS OF THE EXTERIOR AND INTERIOR OF FEDERAL BUILDINGS:

- Observe the individual's actions until such time that you believe that a Field Interview (FI) is warranted. Remember that the public has a right to photograph the exterior of federal facilities from publicly accessible spaces such as streets, sidewalks, parks and plazas.
- Approach the individual taking the photographs only if the individual is on federal property. PSO's are only authorized to conduct security activities while on duty at federally owned or leased facilities.
- Identify yourself.
- Conduct a FI to determine the purpose for taking photographs of the facility and endeavor to ascertain the identity of the individual. Note that such encounters are voluntary contacts, not detentions. Thus, the individual does not have to answer any of your questions or identify him or herself.
- Because the initial interview is voluntary, PSO's should not seize the camera or its contents, and must be cautious not to give such "orders" to a photographer to erase the contents of a camera, as this constitutes a seizure or detention.
- If the FI does not yield a reasonable belief of suspicious activity the photography should be permitted to proceed unimpeded.
- If the FI does yield a reasonable belief of suspicious activity, immediately contact the FPS MegaCenter and request an FPS Officer. Become a good witness and note the individual's physical description, vehicle description, direction of travel, etc. Update the FPS MegaCenter and provide this information to the FPS Officer upon their arrival.
- All contact with the public, including photographers, must be conducted in a professional and polite manner.
- PSO personnel should not be distracted from their duties by engaging in assisting the photographic effort (posing for or taking a picture).
- Be aware that some individuals photographing or videotaping federal facilities for purposes of testing your response to a First Amendment-protected activity are very knowledgeable about the First Amendment and government regulations pertaining to photography and videotaping.

(U) ANALYSIS

(U//FOUO//LES) Pre-operational surveillance is one of the most important steps that criminals and terrorists employ in pre-attack planning. One of the most popular forms of pre-operational surveillance is photographing the target to find strengths, weaknesses, security posts, entries, exits and more. Because of this, it is extremely important that FPS personnel and PSOs use the proactive methods described above to determine whether individuals who are photographing federal buildings are of concern. At the same time, however, FPS personnel and PSOs must be sensitive that the individuals have a right to exterior photography from publicly accessible spaces and to interior photography under certain circumstances described in the regulations.

(U) GEOGRAPHIC AREAS OF CONSIDERATION

(U//FOUO//LES) Nationwide.

(U//FOUO) This Operational Readiness Order becomes effective upon receipt and remains effective until canceled.

(U) RESOURCES

(U//FOUO) For additional information regarding photography of federal facilities and this Operational Readiness Order, please contact the Protective Operations Division, FPSIMC@hq.dhs.gov, or Michelle Tonelli, michelle.p.tonelli@hq.dhs.gov, Operational Law Attorney, Nick Mutton, nicholis.d.mutton@hq.dhs.gov, Operational Law Attorney, or Kent Keith, kent.j.keith@hq.dhs.gov, Operational Law Attorney.

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**1-877-4-FPS-411
(1-877-437-7411)**