

Office of the Secretary of Defense

§ 266.1

- (1) Release for information only.
- (2) Permission for manufacture, or use, for defense purposes.

(f)(1) All technical information, whether privately owned or government owned, released to a foreign government by Department of Defense Agencies shall be marked with the following restrictions:

1. This information is accepted for defense purposes only.
2. This information shall be accorded substantially the same degree of security protection as such information has in the United States.
3. This information shall not be disclosed to another country without the consent of the United States.

(2) When technical information which might be privately owned is released for information only, the restrictive marking shall also contain these additional notations:

4. This information is accepted upon the understanding that it might be privately owned.
5. This information is accepted solely for the purpose of information and shall accordingly be treated as disclosed in confidence. The recipient Government shall use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the private owner thereof to obtain patent or other like statutory protection therefor.
6. The recipient Government shall obtain the consent of the United States if it desires that this information be made available for manufacture, or use, for defense purposes.

(g) When technical information which might be privately owned is released under the procedures set forth herein, the owner, if known, shall be furnished:

- (1) Notice of the release;
- (2) The identity of the recipient, if not contrary to security regulations;
- (3) Notice that the recipient has been advised that the information might be privately owned; and
- (4) Notice of the restrictions to which the release is subject.

§ 264.5 Claims for compensation.

(a) With respect to interchanges in furtherance of the purposes of the Mutual Security Act of 1954, as amended, section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) provides the exclusive remedy for com-

ensation for infringement within the United States of a patent issued by the United States and for damage resulting from the disclosure by the United States of privately owned technical information.

(b) The Secretaries of the Military Departments are hereby authorized to exercise the power and authority conferred by section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) to enter into agreements with claimants in full settlement and compromise of any claim against the United States thereunder, subject to such rules and regulations, if any, as the Secretary of Defense may promulgate from time to time. The Secretaries of the Military Departments are authorized to make successive redelegations in writing of this power and authority to any officer, employee, board or agent of their respective departments.

(c) Funds appropriated for military assistance pursuant to the Mutual Security Act of 1954, as amended, which have been made available to a Military Department may be used to settle claims under section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758). In addition, in those cases where the provisions of 10 U.S.C. 2386 are applicable, funds appropriated for a Military Department available for making or procuring supplies may be used to settle such claims.

PART 266—AUDITS OF STATE AND LOCAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER NONPROFIT INSTITUTIONS

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- 266.1 Purpose.
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 - 266.4 Policy.
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AUTHORITY: 10 U.S.C. 140.

SOURCE: 56 FR 36003, July 30, 1991, unless otherwise noted.

§ 266.1 Purpose.

This part:

- (a) Updates policy, responsibilities, and procedures.

§ 266.2

(b) Implements Public Law 98-502 (31 U.S.C. 7501-7507 and 3512) and Office of Management and Budget (OMB) Circulars A-128¹ and A-133² to establish audit requirements for State and local governments, institutions of higher education, and other nonprofit institutions that receive Federal financial assistance.

(c) Assigns responsibilities within the Department of Defense for monitoring compliance with those requirements.

§ 266.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components") that provide Federal financial assistance to State and local governments, institutions of higher education, and other nonprofit institutions.

§ 266.3 Definitions.

Terms used in this part are defined in OMB Circulars A-128 and A-133 with the following deviation. Funds paid by the National Guard Bureau to States under facilities' operation and maintenance agreements do not constitute "Federal financial assistance" for purposes of Public Law 98-502 and OMB Circular A-128.

§ 266.4 Policy.

The DoD Components shall rely on and use financial and performance audits performed by non-Federal auditors under OMB Circular A-128 and independent auditors under OMB Circular A-133 in the oversight of Federal financial assistance provided to State and local governments, institutions of higher education, and other nonprofit institutions. Public Law 98-502 provides that a non-Federal audit of the operations of a State or local govern-

¹Forward written requests to: Office of Management and Budget Publications, 725 17th Street, NW, New Executive Office Building, Washington, DC 20503.

²See footnote 1 to § 266.1(b).

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ment performed under OMB Circular A-128 may exclude public colleges and universities, in which case an audit of the public college or university shall be made in accordance with OMB Circular A-133. The DoD Components, however, may request additional audits of such assistance when required by regulation or to ensure effective use of such assistance as deemed necessary. Any additional audit effort shall be planned and carried out in such a way as to avoid duplication and shall be separately funded.

§ 266.5 Responsibilities.

(a) The Inspector General of the Department of Defense shall:

(1) Serve as the DoD senior official under OMB Circulars A-128 and A-133 for policy guidance, direction, and coordination with DoD Components and other Federal Agencies on audit matters related to State and local governments, institutions of higher education and other nonprofit institutions.

(2) For State and local governments, institutions of higher education, and other nonprofit institutions for which the OMB has assigned the DoD cognizance, do the following:

(i) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of OMB Circulars A-128 and A-133.

(ii) Provide technical advice and liaison through the DoD Components to State and local governments, institutions of higher education, other nonprofit institutions, and independent auditors.

(iii) Make desk reviews of all reports received, and also make quality control reviews of selected audits made by non-Federal audit organizations and provide the results, when appropriate, to other interested organizations.

(iv) Promptly inform other affected Federal Agencies and appropriate law enforcement officials of any reported illegal acts or irregularities in accordance with requirements of OMB Circulars A-128 and A-133.

(v) Advise the recipient of audits that have been found not to have met the requirements in OMB Circulars A-128 and A-133. In such instances, the recipient will work with the auditor to

take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive sub-standard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(vi) Coordinate, to the extent practicable, audits requested by other Federal Agencies, in addition to those required by OMB Circulars A-128 and A-133.

(vii) Ensure the resolution of audit findings and recommendations that affect DoD programs and those findings affecting programs of more than one Federal Agency. Ensure that a management decision affecting audit resolution shall be made within 6 months after receipt of the audit report.

(3) For local governments, institutions of higher education, and other nonprofit institutions for which the Department of Defense has assumed oversight responsibility, do the following:

(i) Provide technical advice and counsel through DoD Components to institutions and independent auditors when requested.

(ii) Assume all or some of the cognizant agency responsibilities (see paragraph (a)(2) of this section), as deemed necessary.

(4) For other State and local governments, institutions of higher education, and other nonprofit institutions, receive and distribute copies of single audit reports to appropriate DoD Components for appropriate action and followup by designated program officials.

(5) For audit reports that contain conditions affecting DoD programs, institute followup efforts to ensure that corrective actions have been taken by DoD organizations responsible for managing associated programs or funds.

(b) The Heads of the DoD Components shall:

(1) Designate an official to coordinate with the IG, DoD, on matters dealing with audits of financial assistance provided by the DoD Component to State and local governments, insti-

tutions of higher education, and other nonprofit institutions.

(2) Ensure input of accurate award data for Federal financial assistance to the appropriate DoD management information system.

(3) Ensure that the State or local government, institution of higher education, or other nonprofit institution takes appropriate actions to correct audit deficiencies involving financial assistance provided by the DoD Component.

(4) For State and local governments, institutions of higher education, and other nonprofit institutions for which the OMB has assigned DoD cognizance, do the following:

(i) Coordinate with the IG, DoD, on requests from other Federal Agencies for audits of State and local governments, institutions of higher education, and other nonprofit institutions, in addition to those required by OMB Circulars A-128 and A-133.

(ii) Seek the views of other interested agencies when a coordinated audit approach is to be used and before completing a coordinated program.

(iii) Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

§ 266.6 Procedures.

The costs of audits made by non-Federal auditors under OMB Circulars A-128 and A-133 are allowable charges to Federal financial assistance programs. The charges may be considered as a direct cost or an allocated indirect cost in accordance with OMB Circulars A-87, A-122 and A-21³; FAR, part 31 (48 CFR part 31); or the DFARS, part 231 (48 CFR part 231). Generally, the percentage of costs charged to Federal assistance programs for an audit shall not exceed the percentage of Federal funds expended to the total funds expended by the recipient during the fiscal year. No cost, however, may be charged to Federal programs for audits

³See footnote 1 to § 266.1(b).

not made in accordance with OMB Circulars A-128 and A-133 and other applicable cost principles and regulations.

PART 268—COLLECTING AND REPORTING OF FOREIGN INDEBTEDNESS WITHIN THE DEPARTMENT OF DEFENSE

Sec.

- 268.1 Purpose.
- 268.2 Applicability.
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- 268.6 Reporting of accounts receivable and sales under 120 days delayed payment terms (short-term credit).
- 268.7 Collecting and reporting of foreign debts under long-term loans and debts.
- 268.8 Flash report of major foreign debt arrearages.
- 268.9 Discussion of terms.

AUTHORITY: Federal Claims Collection Act of 1966 (31 U.S.C. 951-953); Arms Export Control Act, sec. 23.

SOURCE: 43 FR 11196, Mar. 17, 1978, unless otherwise noted.

§ 268.1 Purpose.

This part establishes standard procedures to be used for the collecting and reporting of foreign indebtedness. Such indebtedness may arise through the (a) sale of Defense articles and services pursuant to the Arms Export Control Act; (b) operation of military missions; and (c) logistical support provided under country-to-country agreements.

§ 268.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies (hereafter referred to as "DoD Components").

§ 268.3 Policy.

It is the policy of the Department of Defense that timely and aggressive collection efforts will be conducted to assure that foreign arrearages to DoD Components are held to the absolute minimum. Foreign indebtedness will be uniformly and accurately reported to the Department of the Treasury on forms prescribed by the Treasury Fiscal Requirements Manual. The information system on the status of collection actions will support the informa-

tion requirements of the National Advisory Council on International Monetary and Financial Policies (NAC).

§ 268.4 Responsibilities.

(a) The assistant Secretary of Defense (Comptroller) is the DoD point of contact for matters concerning foreign indebtedness requirements imposed on DoD from outside the Department, such as by the Congress, Treasury Department, and NAC.

(b) The Defense Security Assistance Agency (DSAA) is responsible for consolidation of feeder arrearage reports and submission of a single consolidated DoD arrearage report to the Treasury Department. The DSAA shall (1) monitor collection actions; (2) follow up when initial collection actions have been unsuccessful; and (3) serve as the focal point within DoD for responding to NAC information requests.

(c) Unless otherwise directed, the DoD Component which makes the sale, or is otherwise assigned responsibility, is responsible for taking initial collection action, accounting for indebtedness, preparation of feeder arrearage reports, and providing copies of arrearage reports to the DSAA.

§ 268.5 Collection and followup procedures.

Each DoD Component is responsible for taking timely and aggressive billing and followup collection actions for each category of indebtedness incurred by official and private obligors pursuant to authorized programs.

§ 268.6 Reporting of accounts receivable and sales under 120 days delayed payment terms (short-term credit).

(a) *General.* (1) Amounts payable to DoD Components for sales of Defense articles and services on terms which require payment of cash in advance of delivery/performance or within 60 days thereof will be classified as accounts receivable. Military Departments shall submit reports to the DSAA of foreign indebtedness related to those sales.

(2) Sales made by DoD Components under existing cases which provide for