

Department of Defense

§ 1128.710

third-party in-kind contributions for cost sharing or matching purposes.

(b) *Award terms and conditions*—(1) *General*. To implement the OMB guidance described in paragraph (a) of this section as it applies to valuation and documentation of third-party in-kind contributions, a DoD Component's general terms and conditions must use the wording Section VI of appendix F to this part provides as Section F of FMS Article VI.

(2) *Exception*. A DoD Component's general terms and conditions may reserve any paragraph of the wording appendix F to this part provides for Section F of FMS Article VI if the DoD Component determines that there will be no possibility of third-party in-kind contributions under awards using those terms and conditions.

Subpart G—Program Income (FMS Article VII)

§ 1128.700 Purpose of FMS Article VII.

FMS Article VII of the general terms and conditions specifies requirements for program income that recipients earn. The article thereby implements OMB guidance in 2 CFR 200.80 and 200.307.

§ 1128.705 Content of FMS Article VII.

(a) *Requirement*. A DoD Component's general terms and conditions must address the kinds of income included as program income, the way or ways in which a recipient may use it, the duration of the recipient's accountability for it, and related matters.

(b) *Award terms and conditions*. A DoD Component's general terms and conditions must include as FMS Article VII the wording appendix G to this part provides, unless, as authorized by §§ 1128.710 through 1128.725, there are revisions to the wording of Sections A and E of the article or Section D is reserved.

§ 1128.710 What program income includes.

(a) *OMB guidance*. Under the definition of “program income” at 2 CFR 200.80 and related OMB guidance at 2 CFR 200.307, an agency's regulations or terms and conditions of grants and co-

operative agreements may include as program income:

(1) Rebates, credits, discounts, and interest earned on any of them; and

(2) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient.

(b) *DoD implementation*. Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, each DoD Component must exclude the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(c) *Award terms and conditions* — (1) *General*. Except as provided in paragraph (c)(2) of this section, a DoD Component must use the wording provided in appendix G to this part as Section A of FMS Article VII in its general terms and conditions. Doing so excludes the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(2) *Exceptions*. If a DoD Component has a statutory or regulatory basis for including either or both types of income described in paragraphs (a)(1) and (2) of this section, it may do so by appropriately revising the wording appendix G provides for Section A of FMS Article VII. For example, to include as program income:

(i) Rebates, credits, discounts, and interest earned on them, a DoD Component would reserve paragraph A.3.c and insert the wording of that paragraph as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.

(ii) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient, a DoD Component would reserve paragraph A.3.d and insert that wording as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.