

Termination shall not relieve the DIB participant or the Government from obligations to continue to protect against the unauthorized use or disclosure of GFI, attribution information, contractor proprietary information, third-party proprietary information, or any other information exchanged under this program, as required by law, regulation, contract, or the FA.

(f) Upon termination of the FA, and/or change of Facility Security Clearance (FCL) status below Secret, GFI must be returned to the Government or destroyed pursuant to direction of, and at the discretion of, the Government.

(g) Participation in these activities does not abrogate the Government's, or the DIB participants' rights or obligations regarding the handling, safeguarding, sharing, or reporting of information, or regarding any physical, personnel, or other security requirements, as required by law, regulation, policy, or a valid legal contractual obligation. However, participation in the voluntary activities of the DIB CS program does not eliminate the requirement for DIB participants to report cyber incidents in accordance with § 236.4.

[80 FR 59584, Oct. 2, 2015, as amended at 81 FR 68317, Oct. 4, 2016]

§ 236.7 DoD's DIB CS program requirements.

(a) To participate in the DIB CS program, a contractor must be a CDC and shall:

(1) Have an existing active FCL to at least the Secret level granted under the NISPOM (DoD 5220.22-M); and

(2) Execute the standardized FA with the Government (available during the application process), which implements the requirements set forth in §§ 236.5 through 236.7, and allows the CDC to select their level of participation in the voluntary DIB CS program.

(3) In order for participating CDCs to receive classified cyber threat information electronically, they must:

(i) Have or acquire a Communication Security (COMSEC) account in accordance with the NISPOM Chapter 9, Section 4 (DoD 5220.22-M), which provides procedures and requirements for COMSEC activities; and

(ii) Have or acquire approved safeguarding for at least Secret information, and continue to qualify under the NISPOM for retention of its FCL and approved safeguarding; and

(iii) Obtain access to DoD's secure voice and data transmission systems supporting the voluntary DIB CS program.

(b) [Reserved]

[80 FR 59584, Oct. 2, 2015, as amended at 81 FR 68317, Oct. 4, 2016]

PART 238—DoD ASSISTANCE TO NON-GOVERNMENT, ENTERTAINMENT-ORIENTED MEDIA PRODUCTIONS

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APPENDIX A TO PART 238—SAMPLE PRODUCTION ASSISTANCE AGREEMENT

APPENDIX B TO PART 238—SAMPLE DOCUMENTARY PRODUCTION ASSISTANCE AGREEMENT

AUTHORITY: 10 U.S.C. 2264; 31 U.S.C. 9701.

SOURCE: 80 FR 47836, Aug. 10, 2015, unless otherwise noted.

§ 238.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for DoD assistance to non-Government entertainment media productions such as feature motion pictures, episodic television programs, documentaries, and electronic games.

§ 238.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the combatant commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (referred to collectively in this part as the "DoD Components").

(b) Does not apply to productions that are intended to inform the public

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of fast-breaking or developing news stories.

§ 238.3 Definitions.

Unless otherwise noted, this term and its definition are for the purposes of this part.

Assistance (as in “DoD Assistance to Non-Government, Entertainment-Oriented Media Productions”). The variety of support that the DoD can provide. The assistance ranges from supplying technical advice during script development, to allowing access to military installations for production.

§ 238.4 Policy.

It is DoD policy that:

(a) DoD assistance may be provided to an entertainment media production, to include fictional portrayals, when cooperation of the producers with the Department of Defense benefits the Department of Defense, or when such cooperation would be in the best interest of the Nation based on whether the production:

(1) Presents a reasonably realistic depiction of the Military Services and the Department of Defense, including Service members, civilian personnel, events, missions, assets, and policies;

(2) Is informational and considered likely to contribute to public understanding of the Military Services and the Department of Defense; or

(3) May benefit Military Service recruiting and retention programs.

(b) DoD assistance to an entertainment-oriented media production will not deviate from established DoD safety and environmental standards, nor will it impair the operational readiness of the Military Services. Diversion of equipment, personnel, and material resources will be kept to a minimum.

(c) The production company will reimburse the Government for any expenses incurred as a result of DoD assistance rendered in accordance with the procedures in this part.

(d) Official activities of Service personnel in assisting the production; use of official DoD property, facilities, and material; and employment of Service members in an off-duty, non-official status will be in accordance with the procedures in this part.

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(e) Footage shot with DoD assistance and official DoD footage released for a specific production will not be reused for or sold to other productions without Department of Defense approval.

§ 238.5 Responsibilities.

(a) The Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)) will serve as the sole authority for approving DoD assistance, including DoD involvement in marketing and publicity, to non-Government entertainment-oriented media. The ATSD(PA) will make DoD commitments, in consultation with the Heads of the Military Components, only after:

(1) The script, treatment, or narrative description is found to qualify in accordance with the general principles in § 238.4(a).

(2) The support requested is determined to be feasible.

(3) For episodic television, motion pictures, and other nondocumentary entertainment media productions, the producer has an acceptable public exhibition agreement with a recognized exhibition entity (*i.e.*, studio or network), and the capability to complete the production (*i.e.*, completion bond or other industry-recognized guarantor of completion, such as the commitment of a major studio or other source of financial commitment). For documentaries, the producer has indicated a clear capability to complete the production.

(b) The Heads of the Military Components will develop procedures for implementing this part and will ensure that the requirements of this part are met.

§ 238.6 Procedures.

(a) *General.* (1) The producer will be required to sign a written Production Assistance Agreement (see appendices A and B of this part for sample documents), explaining the terms under which DoD's production assistance is provided, with the designee of the Assistant to the Secretary of Defense for Public Affairs, and may be required to post advance payment or a letter of credit issued by a recognized financial institution to cover the estimated costs before receiving DoD assistance.

(2) Official activities of Service members in assisting the production must