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Dated: August 21, 2001.

**Stephen F. Sundlof,***Director, Center for Veterinary Medicine.*

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**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Parts 230 and 231a****RIN 0790-AG73****Financial Institutions on DoD Installations****AGENCY:** Department of Defense.**ACTION:** Final rule.

**SUMMARY:** This final rule removes regulations on "Procedures governing Banking Offices on DoD Installations" and revises regulations on "Financial Institutions on DoD Installations." This rule is being promulgated to provide administrative guidelines for the operation of banks and credit unions on domestic and overseas installations of the Department of Defense and addresses areas such as the solicitation for such services, the types of services and the logistics support provided.

**DATES:** This rule is effective June 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** T. Summers, 703-602-0299.

**SUPPLEMENTARY INFORMATION:****I. Background**

Stateside military banking began in 1941 when the Department realized that financial services were urgently needed by military and civilian personnel on domestic installations. To address this need, the Department permitted installation commanders to negotiate with nearby local banks to establish branches on their installation. Today, there are over 230 domestic installations that have either a bank or credit union or both. To ensure consistency between installations in the level, cost and types of financial services offered, the Department established regulations in parts 230 and 231 to govern the operation and oversight of these institutions. These regulations limit the number of financial institutions that may operate on an installation to one bank and one credit union (with a grandfather provision). The regulations require full and open competition for a full spectrum of banking services (to include electronic banking services). Policy guidance relating to the military

banking program, by regulation, is the responsibility of the Under Secretary of Defense (Comptroller) while operational guidance rests with the Defense Finance and Accounting Service (DFAS). To ensure financial services are available on our overseas installations, the Department operates the overseas military banking program. The DFAS has been assigned the program office responsibilities for this effort, which is provided under contract by a domestic financial institution. In FY 2000, the overseas military banking program contractor operated 110 banking offices and over 250 automated teller machines in 10 foreign countries. Overseas military banks support DoD personnel and their families, disbursing officers, appropriated fund activities (such as the Defense Commissary Agency) and nonappropriated fund activities (such as the Army and Air Force Exchange Service).

**II. Comments, and Changes to, the Proposed Rule**

The Department of Defense published the proposed rule on August 11, 1999 (64 FR 43856). Over 240 comments from 55 entities were received in response to the publication of the previously published proposed rule. The majority of the comments on Part 230 of the proposed rule focused on two areas: (1) Prohibiting the assessment of automated teller machine (ATM) surcharging and (2) the establishment of a ceiling for other fees and charges. These comments and their disposition are specifically addressed below. The remainder of the comments were either administrative in nature or suggested that additional clarification was needed in certain areas. None of these resulted in any significant changes to the proposed rule.

**A. Section 230.4(a)(7)(i)**

This section of the previously published proposed rule would have required that on-base ATM service offered by financial institutions operating on domestic installations and domestic credit unions operating on DoD installations overseas be provided without surcharge. Forty-nine of the fifty-five entities providing comments objected to this limitation. While being sympathetic to the Department's interest in shielding lower income military members and civilian employees from ATM fees, the comments essentially reflected the belief that the freedom from any regulatory constraints relating to a surcharge fee structure should be permitted to create an environment by which the "economics of the marketplace" determine the level of any surcharges that an institution might

consider levying. In this regard, such factors as operational expense structures, ATM usage factors and the convenience factor should be the litmus test of the extent to which surcharges, if any, should be imposed by the financial institution installing the ATM. It was also noted that ATM surcharges typically are incurred by noncustomers, i.e., by persons who have chosen to use a particular financial institution's ATM, but have chosen not to establish an account relationship with that institution. Thus, the incurring of ATM surcharges is voluntary and an individual can readily avoid surcharges by either establishing a deposit account with that institution or by only using the ATMs of the individual's existing depository institution. Those entities providing comments on this section made a number of compelling arguments to retain the existing requirement that requires the banking liaison officer (BLO) and credit union liaison officer (CULO) annually review service charges and fees (to include surcharges on ATM transactions). As a result, this section has been deleted in its entirety.

**B. Section 230.4(a)(3)(iv)**

This section of the previously published proposed rule would have required that retail fees and services for products (to include related minimum balance requirements for noninterest checking, Negotiable Order of Withdrawal (NOW) and savings accounts) offered by financial institutions operating on DoD installations shall not exceed 110 percent of the industry-wide averages for banks in the "Annual Report to Congress on Retail Fees and Services of Depository Institutions," published by the Board of Governors of the Federal Reserve System. In its comments, the National Association of Federal Credit Unions (NAFCU) took exception to the 110 percent limitation citing that a credit union's fee structure is designed to allow credit unions to provide members with convenient and efficient services, as well as, a good return on their ownership interest. The Department has reviewed the concerns expressed and, based on its review, has removed the 110 percent ceiling requirement.

**III. Executive Order 12866, Regulatory Planning and Review**

It has been determined that 32 CFR part 230 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the

economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### **IV. Public Law 96-354, Regulatory Flexibility Act (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is being promulgated to provide administrative guidelines for the operation of banks and credit unions on domestic and overseas installations of the Department of Defense and address areas such as the solicitation for such services, the types of services and the logistics support provided.

#### **V. Public Law 96-511, Paperwork Reduction Act (44 U.S.C. Chapter 35)**

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### **VI. Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"**

It has been certified that the rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

#### **VII. Executive Order 13132, "Federalism"**

It has been certified that the rule does not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### **List of Subjects in 32 CFR Parts 230 and 231a**

Armed forces, Banks, Banking, Credit unions, Federal buildings and facilities.

Accordingly, 32 CFR part 230 is revised to read as follows:

### **PART 230—FINANCIAL INSTITUTIONS ON DOD INSTALLATIONS**

Sec.

230.1 Purpose.

230.2 Applicability.

230.3 Definitions.

230.4 Policy.

230.5 Responsibilities.

**Authority:** 10 U.S.C. 136

#### **§ 230.1 Purpose.**

This part:

(a) Updates policies and responsibilities for financial institutions that serve Department of Defense (DoD) personnel on DoD installations worldwide. Associated procedures are contained in 32 CFR part 231.

(b) Prescribes consistent arrangements for the provision of services by financial institutions among the DoD Components, and requires that financial institutions operating on DoD installations provide, and are provided, support consistent with the policies stated in this part.

#### **§ 230.2 Applicability.**

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff (JCS), the Combatant Commands, 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 (hereafter collectively referred to as "the DoD Components") and all nonappropriated fund instrumentalities including the Military Exchange Services and morale, welfare and recreation (MWR) activities.

#### **§ 230.3 Definitions.**

Terms used in this part are set forth in 32 CFR part 231.

#### **§ 230.4 Policy.**

(a) The following pertains to financial institutions on DoD installations:

(1) Except where they already may exist as of May 1, 2000, no more than one banking institution and one credit union shall be permitted to operate on a DoD installation.

(2) Upon the request of an installation commander and with the approval of the Secretary of the Military Department concerned (or designee), duly chartered financial institutions may be authorized to provide financial services on DoD installations to enhance the morale and welfare of DoD personnel and facilitate the administration of public and quasi-public monies. Arrangement for the provision of such services shall be in accordance with this part and the applicable provisions of 32 CFR part 231.

(3) Financial institutions or branches thereof, shall be established on DoD installations only after approval by the Secretary of the Military Department concerned (or designee) and the appropriate regulatory agency.

(i) Except in limited situations overseas (see paragraph (b)(2)(iii) of this section), only banking institutions insured by the Federal Deposit Insurance Corporation and credit unions insured by the National Credit Union Share Insurance Fund or by another insurance organization specifically qualified by the Secretary of the Treasury, shall operate on DoD installations. These financial institutions may either be State or federally chartered; however, U.S. credit unions operated overseas shall be federally insured.

(ii) Military banking facilities (MBFs) shall be established on DoD installations only when a demonstrated and justified need cannot be met through other means. An MBF is a financial institution that is established by the Department of the Treasury under statutory authority that is separate from State or Federal laws that govern commercial banking. Section 265 of title 12, United States Code contains the provisions for the Department of the Treasury to establish MBFs. Normally, MBFs shall be authorized only at overseas locations. This form of financial institution may be considered for use at domestic DoD installations only when the cognizant DoD Component has been unable to obtain, through normal means, financial services from a State or federally chartered financial institution authorized to operate in the State in which the installation is located. In times of mobilization, it may become necessary to designate additional MBFs as an emergency measure. The Director, Defense Finance and Accounting Service (DFAS) may recommend the designation of MBFs to the Department of the Treasury.

(iii) Retail banking operations shall not be performed by any DoD Component. Solicitations for such services shall be issued, or proposals accepted, only in accordance with the policies identified in this part. The DoD Components shall rely on commercially available sources in accordance with DoD Directive 4100.15.<sup>1</sup>

(4) Installation commanders shall not seek the provision of financial services from any entity other than the on-base banking office or credit union. The Director, DFAS, with the concurrence of the Under Secretary of Defense

<sup>1</sup> See footnote 1 to § 231.1(a).

(Comptroller) (USD(C)), may approve exceptions to this policy.

(5) Financial institutions authorized to locate on DoD installations shall be provided logistic support as set forth in 32 CFR part 231.

(6) Military disbursing offices, nonappropriated fund instrumentalities (including MWR activities and the Military Exchange Services) and other DoD Component activities requiring financial services shall use on-base financial institutions to the maximum extent feasible.

(7) The Department encourages the delivery of retail financial services on DoD installations via nationally networked automated teller machines (ATMs).

(i) ATMs are considered electronic banking services and, as such, shall be provided only by financial institutions that are chartered and insured in accordance with the provisions of paragraph (a)(3) of this section.

(ii) Proposals by the installation commander to install ATMs from other than on-base financial institutions shall comply with the provisions of paragraph (a)(4) of this section.

(8) Expansion of financial services (to include in-store banking) requiring the outgrant of additional space or logistical support shall be approved by the installation commander. Any DoD activity or financial institution seeking to expand financial services shall coordinate such requests with the installation bank/credit union liaison officer prior to the commander's consideration.

(9) The installation commander shall ensure, to the maximum extent feasible, that all financial institutions operating on that installation are given the opportunity to participate in pilot programs to demonstrate new financial-related technology or establish new business lines (e.g., in-store banking) where a determination has been made by the respective DoD Component that the offering of such services is warranted.

(10) The installation commander shall approve requests for termination of financial services that are substantiated by sufficient evidence and forwarded to the Secretary of the Military Department concerned (or designee). The Secretary of the Military Department (or designee) shall coordinate such requests with the USD(C), through the Director, DFAS, before notification to the appropriate regulatory agency.

(11) Additional guidance pertaining to financial services is set forth in 32 CFR part 231.

(b) The following additional provisions pertain only to financial

institutions on overseas DoD installations:

(1) The extension of services by MBFs and credit unions overseas shall be consistent with the policies stated in this part and with the applicable status of forces agreements, other intergovernmental agreements, or host-country law.

(2) Financial services at overseas DoD installations may be provided by:

(i) Domestic on-base credit unions operating overseas under a geographic franchise and, where applicable, as authorized by the pertinent status of forces agreements, other intergovernmental agreements, or host-country law.

(ii) MBFs operated under and authorized by the pertinent status of forces agreement, other intergovernmental agreement, or host-country law.

(iii) Domestic and foreign banks located on overseas DoD installations that are:

(A) Chartered to provide financial services in that country, and

(B) A party to a formal operating agreement with the installation commander to provide such services, and

(C) Identified, where applicable, in the status of forces agreements, other intergovernmental agreements, or host-country law.

(3) In countries served by MBFs operated under contract, nonappropriated fund instrumentalities and on-base credit unions that desire, and are authorized, to provide accommodation exchange services shall acquire foreign currency from the MBF at the MBF accommodation rate; and shall sell such foreign currency at a rate of exchange that is no more favorable to the customer than the customer rate available at the MBF.

#### **§ 230.5 Responsibilities.**

(a) The Under Secretary of Defense (Comptroller) (USD(C)) shall develop policies governing establishment, operation, and termination of financial institutions on DoD installations and take final action on requests for exceptions to this part.

(b) The Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)) shall monitor policies and procedures governing logistical support furnished to financial institutions on DoD installations, including the use of DoD real property and equipment.

(c) The Under Secretary of Defense (Personnel and Readiness) (USD(P&R)) shall advise the USD(C) on all aspects of on-base financial institution services

that affect the morale and welfare of DoD personnel.

(d) DoD Component responsibilities pertaining to this part are set forth in 32 CFR part 231.

#### **PART 231a—[REMOVED]**

By the authority of 10 U.S.C. 301, 32 CFR part 231a is removed.

Dated: August 29, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Coast Guard**

#### **33 CFR Part 100**

**[CGD 05-01-056]**

#### **Special Local Regulations for Marine Events; Hampton River, Hampton, VA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.508 during the Hampton Bay Days Festival to be held September 7-9, 2001, on the waters of the Hampton River at Hampton, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the festival events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

**EFFECTIVE DATES:** 33 CFR 100.508 is effective from 12 noon eastern time on September 7, 2001 to 6 p.m. eastern time on September 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer J. Saffold, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703-2199, (757) 483-8521.

**SUPPLEMENTARY INFORMATION:** Hampton Bay Days, Inc. will sponsor the Hampton Bay Days Festival on September 7-9, 2001 on the Hampton River, Hampton, Virginia. The festival will include water ski demonstrations, personal watercraft and wake board competitions, paddle boat races, classic boat displays, fireworks displays and a helicopter rescue demonstration. A fleet of spectator vessels is expected to gather nearby to view the festival events. In