

subchapter C, title 32, to a new location in chapter XI, title 2 of the CFR. During the transition, there will be some parts of the DoDGARs in each of the two titles.

(c) The DoD publishes updates to the DoDGARs in the FEDERAL REGISTER for public comment.

(d) A standing working group recommends revisions to the DoDGARs to the ASD(R&E). The ASD(R&E), Director of Defense Procurement, and each Military Department must be represented on the working group. Other DoD Components that make or administer awards may also nominate representatives. The working group meets when necessary.

[85 FR 51240, Aug. 19, 2020]

**§ 21.335 Who can authorize deviations from the DoDGARs?**

(a) The Head of the DoD Component or his or her designee may authorize individual deviations from the DoDGARs, which are deviations that affect only one award, if the deviations are not prohibited by statute, executive order or regulation.

(b) The ASD(R&E) or his or her designee must approve in advance any deviation for a class of awards. Note that, as described at 2 CFR 1126.3, OMB concurrence also is required for some class deviations from requirements included in awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

[68 FR 47153, Aug. 7, 2003, as amended at 85 FR 51240, Aug. 19, 2020]

**§ 21.340 What are the procedures for requesting and documenting deviations?**

(a) DoD Components must submit copies of justifications and agency approvals for individual deviations and written requests for class deviations to: Principal Deputy Assistant Secretary of Defense for Research and Engineering, ATTN: Basic Research, 3030 Defense Pentagon, Washington, DC 20301-3030.

(b) Grants officers and agreements officers must maintain copies of requests

and approvals for individual and class deviations in award files.

[68 FR 47153, Aug. 7, 2003, as amended at 85 FR 51240, Aug. 19, 2020]

**Subpart D—Authorities and Responsibilities for Making and Administering Assistance Awards**

**§ 21.400 To what instruments does this subpart apply?**

This subpart applies to grants, cooperative agreements, and technology investment agreements, which are legal instruments used to reflect assistance relationships between the United States Government and recipients.

**§ 21.405 What is the purpose of this subpart?**

This subpart describes the sources and flow of authority to make or administer assistance awards, and assigns the broad responsibilities associated with DoD Components' use of those instruments.

**§ 21.410 Must a DoD Component have statutory authority to make an assistance award?**

Yes, the use of an assistance instrument to carry out a program requires authorizing legislation. That is unlike the use of a procurement contract, for which Federal agencies have inherent, Constitutional authority.

**§ 21.415 Must the statutory authority specifically mention the use of grants or other assistance instruments?**

No, the statutory authority described in § 21.410 need not specifically say that the purpose of the program is assistance or mention the use of any type of assistance instrument. However, the intent of the statute must support a judgment that the use of an assistance instrument is appropriate. For example, a DoD Component may judge that the principal purpose of a program for which it has authorizing legislation is assistance, rather than acquisition. The DoD Component would properly use an assistance instrument to carry out that program, in accordance with 31 U.S.C. chapter 63.