

Chapter 12

**POLICIES AND PROCEDURES GOVERNING THE USE OF THE AUTHORITY OF SECTION 3732, REVISED STATUTES (NOW 41 U.S.C. 11)**

1201 **OVERVIEW**

120101. **Purpose.** This chapter establishes departmental policy and basic procedures to be followed with respect to the use of the authority of Section 3732, Revised Statutes (41 U.S.C. 11). That statute authorizes the Military Departments to incur obligations for specific purposes in excess of appropriations available.

120102. **General**

A. Title 41, United States Code, section 11, authorizes the Military Departments to incur obligations in excess of available appropriations in procuring or furnishing clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies not to exceed the necessities of the current fiscal year.

B. Title 10, United States Code, section 2204, requires the Secretary of Defense to approve scheduled rates of obligations of funds appropriated to the Department for the purpose of restricting obligations and expenditures as may be necessary to prevent overdrafts and deficiencies in any fiscal year for which appropriations are made. Section 2204 does not prohibit the Department from incurring a deficiency as separately authorized by law.

C. Volume 14 of this Regulation (which implements 31 U.S.C. 1517(a)) establishes the basic system of controls and other fundamental requirements for the administration of appropriations and funds. The system of administrative controls was designed to (1) restrict obligations and expenditures against appropriations and funds to the amounts available therein or to the amounts apportioned, and (2) enable officials to fix responsibility in the officers and employees of the Department who may violate any provision of the law or regulation.

1202 **POLICY AND PROCEDURES**

120201. The Department shall limit its use of the authority in 41 U.S.C. 11 to emergency circumstances. The exigencies of those circumstances must be such that immediate action is imperative and action cannot be delayed long enough to obtain sufficient funds to cover the procurement or furnishing of those items in paragraph 120102.A., above, needed for the current fiscal year. In determining the urgency of the circumstances, due consideration shall be given in each specific case to the feasibility of obtaining funds by use of telephones, facsimile machines, or other electronic means. The authority of 41 U.S.C. 11 shall not be used to circumvent the provisions of 31 U.S.C. 1517(a).

120202. It is not considered practicable to define specifically the conditions and circumstances which conceivably could constitute an emergency. Each instance in which the authority of 41 U.S.C. 11 is to be used must be determined on a case-by-case basis in accordance with the policy guidelines in this chapter.

120203. Funds shall be administered in accordance with the system of administrative controls established by Volume 14 of this Regulation in such a manner that officials, responsible for administering each appropriation, allocation, allotment, and other fund subdivisions, may take timely action to prevent overobligation of any fund subdivision, notwithstanding 41 U.S.C. 11.

120204. Overobligation of any appropriation or fund subject to apportionment, or any subdivision thereof for procurement or furnishing of those items in paragraph 120102.A., above, shall be deemed to be a violation of the Antideficiency Act. There are two exceptions: (A) If the overobligation was made in emergency circumstances in accordance with the spirit and intent of provisions set forth above, and (B) if such procurements are not in excess of the necessities to relieve the period of emergency. However, for the second exception, the necessities for such period cannot exceed the necessities of the current fiscal year.

120205. When it is necessary to create or authorize an overobligation for the purposes set forth in 41 U.S.C. 11, the individual responsible shall determine, and so certify in writing, that all three of the following circumstances existed:

- A. An emergency existed within the spirit and intent of this section (1202).
- B. The purpose for which the overobligation was created or authorized was to meet other necessities of the period involved.
- C. It was not feasible to obtain in advance sufficient funds to cover such necessities.

120206. Such certification shall indicate the amount of the overobligation and shall be filed with the supporting records of the appropriation, allocation, or allotment involved. The overobligation shall be disclosed fully in the fiscal reports to the next higher level of command, indicating that the overobligation was incurred under authority of 41 U.S.C. 11.

120207. Having exercised the authority of 41 U.S.C. 11 pursuant to this chapter, the individual responsible shall advise the next higher level of command immediately and take appropriate steps to obtain additional funds.