

**DEPARTMENT OF DEFENSE****48 CFR Part 232****[DFARS Case 2003–D043]****Defense Federal Acquisition Regulation Supplement; Contract Financing****AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract financing. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**EFFECTIVE DATE:** December 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Sain, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2003–D043.

**SUPPLEMENTARY INFORMATION:****A. Background**

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm>.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Relocation of text addressing general contract financing payment issues from 232.906 to 232.007.
- Deletion of unnecessary text at 232.071 on the composition and responsibilities of the DoD Contract Finance Committee, and deletion of references to the Committee at 232.070(a) and 232.617(a).
- Deletion of text at 232.108 on financial consultation, and deletion of text at 232.207 on specifying amounts to be charged to foreign military sales

accounts in approvals of financing requests. These issues are adequately addressed in the FAR.

- Deletion of text at 232.206(d) on instructions for distribution of financing payments to multiple appropriations accounts. Guidance on this subject is now included in section 204.7108 of the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

- Amendment of 232.404(a)(9) to increase, from \$500 to \$2,500, the dollar value at or below which the requirements of FAR Subpart 32.4, Advance Payments for Non-Commercial Items, do not apply to high school and college publications for military recruitment efforts.

- Clarification of text at 232.501–3(b) on limitation of the Government's liability when the contract price exceeds the funds obligated under the contract.

- Deletion of unnecessary text at 232.605(b) regarding integrated accounting at DoD installations.

- Relocation of text on payment due dates, from 232.905(1) and (2), to 232.904 and 232.906, respectively.

- Deletion of unnecessary text at 232.905(f)(6) on electronic notification to the payment office of Government acceptance and approval. Electronic submission and processing of payment requests is addressed in Subpart 232.70.

- Addition of text at 232.906(a)(i) to address the requirement for contracting officers to insert the standard due date for interim payments on cost-reimbursement contracts for services.

- Deletion of unnecessary text at 232.1007 on specifying amounts to be charged to foreign military sales accounts.

- Deletion of text at 232.1108 on mandatory use of the Governmentwide commercial purchase card. This issue is addressed in 213.270.

- Deletion of informational and procedural text at 232.070(c), 232.409–1, 232.410, 232.501–2, 232.606, 232.610, 232.670, and 232.671. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 70 FR 23827 on May 5, 2005. No comments were received in response to the proposed rule. DoD has adopted the proposed rule as a final rule, with minor editorial changes at 232.007(a) and 232.906(a)(ii).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates, streamlines, and clarifies DFARS text, but makes no significant change to DoD contract financing policy.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 232**

Government procurement.

**Michele P. Peterson,***Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 232 is amended as follows:

■ 1. The authority citation for 48 CFR part 232 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 232—CONTRACT FINANCING**

■ 2. Section 232.007 is added to read as follows:

**232.007 Contract financing payments.**

(a) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer shall insert the standard due dates of 7 days for progress payments, and 14 days for performance-based payments and interim payments on cost-type contracts, in the appropriate paragraphs of the respective payment clauses. For interim payments on cost-reimbursement contracts for services, see 232.906(a)(i).

(b) The contracting officer should coordinate contract financing payment terms with offices that will be involved in the payment process to ensure that specified terms can be met. Where justified, the contracting officer may insert a due date greater than, but not less than, the standard. In determining payment terms, consider—

- (i) Geographical separation;
- (ii) Workload;
- (iii) Contractor ability to submit a proper request; and
- (iv) Other factors that could affect timing of payment.

■ 3. Section 232.070 is amended by revising paragraphs (a) and (c) to read as follows:

**232.070 Responsibilities.**

(a) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(AT&L)DPAP.

(c) See PGI 232.070(c) for information on department/agency contract financing offices.

**232.071 [Removed and Reserved]**

■ 4. Section 232.071 is removed and reserved.

**232.108 [Removed]**

■ 5. Section 232.108 is removed.

**232.206 [Amended]**

■ 6. Section 232.206 is amended by removing paragraph (d).

**232.207 [Removed]**

■ 7. Section 232.207 is removed.

■ 8. The heading of Subpart 232.4 is revised to read as follows:

**Subpart 232.4—Advance Payments for Non-Commercial Items****232.404 [Amended]**

■ 9. Section 232.404 is amended in paragraph (a)(9) by removing "\$500" and adding in its place "\$2,500".

■ 10. Section 232.409–1 is revised to read as follows:

**232.409–1 Recommendation for approval.**

Follow the procedures at PGI 232.409–1 for preparation of the documents required by FAR 32.409–1(e) and (f).

■ 11. Section 232.410 is revised to read as follows:

**232.410 Findings, determination, and authorization.**

If an advance payment procedure is used without a special bank account, follow the procedures at PGI 232.410.

■ 12. Section 232.501–2 is revised to read as follows:

**232.501–2 Unusual progress payments.**

Follow the procedures at PGI 232.501–2 for approval of unusual progress payments.

■ 13. Section 232.501–3 is amended by revising paragraph (b) introductory text to read as follows:

**232.501–3 Contract price.**

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract, provided the contract limits the Government's liability to the lesser of—

\* \* \* \* \*

**232.503–15 [Amended]**

■ 14. Section 232.503–15 is amended in paragraph (d) introductory text, in the first sentence, by removing "252.242–7004(f)(7)" and adding in its place "252.242–7004(e)(7)".

**232.605 [Amended]**

■ 15. Section 232.605 is amended in paragraph (b) by removing the second sentence.

■ 16. Section 232.606 is revised to read as follows:

**232.606 Debt determination and collection.**

When transferring a case to the contract financing office, follow the procedures at PGI 232.606.

■ 17. Section 232.610 is revised to read as follows:

**232.610 Demand for payment of contract debt.**

When issuing a demand for payment of a contract debt, follow the procedures at PGI 232.610.

**232.616 [Amended]**

■ 18. Section 232.616 is amended by removing "(232.108(1))" and adding in its place "(see 232.070(c))".

■ 19. Section 232.617 is revised to read as follows:

**232.617 Contract clause.**

(a) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), may exempt the contracts in FAR 32.617(a)(2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(7) Other exceptions are—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

■ 20. Section 232.670 is revised to read as follows:

**232.670 Transfer of responsibility for debt collection.**

Follow the procedures at PGI 232.670 for transferring responsibility for debt collection.

■ 21. Section 232.671 is revised to read as follows:

**232.671 Bankruptcy reporting.**

Follow the procedures at PGI 232.671 for bankruptcy reporting.

■ 22. Section 232.903 is revised to read as follows:

**232.903 Responsibilities.**

DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.906(a)).

■ 23. Section 232.904 is added to read as follows:

**232.904 Determining payment due dates.**

(d) In most cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14-day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

**232.905 [Removed]**

■ 24. Section 232.905 is removed.

■ 25. Section 232.906 is revised to read as follows:

**232.906 Making payments.**

(a)(i) Generally, the contracting officer shall insert the standard due date of 14 days for interim payments on cost-reimbursement contracts for services in the clause at FAR 52.232–25, Prompt Payment, when using the clause with its Alternate I.

(ii) The restrictions of FAR 32.906 prohibiting early payment do not apply

to invoice payments made to small disadvantaged business concerns. However, contractors shall not be entitled to interest penalties if the Government fails to make early payment.

**232.1007 and 232.1108 [Removed]**

26. Sections 232.1007 and 232.1108 are removed.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 225**

[FRA-2005-20680, Notice No. 2]

RIN 2130-AB65

**Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents; Announcement of Reporting Threshold for Calendar Year 2006**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is amending a portion of the accident reporting regulations. Specifically, FRA is amending the method for calculating the monetary threshold for reporting rail equipment accidents/incidents. The amendment is necessary because, in 2001, the Bureau of Labor Statistics (BLS) ceased collecting and publishing railroad wage data used by FRA in the calculation. Consequently, FRA has had to seek a new source of publicly-available data. In the new formula, FRA uses wage data collected and maintained by the Surface Transportation Board (STB) in place of the unavailable BLS wage data. As equipment data remain available from the BLS, there is no change to the source of the equipment component of the reporting threshold. The purpose of the rule is to ensure and maintain comparability between different years of accident data by having the threshold keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts.

In addition, FRA is using the newly established formula to calculate a new accident/incident monetary reporting threshold for calendar year 2006. This final rule increases the monetary threshold for reporting rail equipment

accidents/incidents from \$6,700 to \$7,700, and applies to accidents and incidents involving railroad property damage that occur on or after January 1, 2006.

**DATES:** *Effective Date:* This final rule is effective January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Arnel Rivera, Staff Director, Systems Support Division, RRS-22, Mail Stop 17, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-1331) or Roberta Stewart, Trial Attorney, Office of Chief Counsel, RCC-12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6027).

**SUPPLEMENTARY INFORMATION:**

**Background**

FRA published a Notice of Proposed Rulemaking (NPRM) on April 19, 2005 (70 FR 20333), proposing to amend the formula for calculating the rail equipment accident/incident monetary reporting threshold, and requested comments. The NPRM proposed to substitute railroad employee wage data collected by the STB for obsolete BLS data that is no longer collected. This final rule adopts the proposed formula, and establishes a new monetary threshold for calendar year 2006.

A "rail equipment accident/incident" is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that causes reportable damages greater than the reporting threshold for the year in which the event occurs to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and materials. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b) and (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

FRA has periodically adjusted the reporting threshold based on the prices of a market basket of railroad labor and materials. The purpose of these adjustments has been to maintain the comparability between different years of

data by having the threshold keep pace with equipment and labor costs so that each year the equivalent group of accidents is included in the reportable accident counts.

Approximately three years have passed since the rail equipment accident/incident reporting threshold was last reviewed and revised. 67 FR 79533 (Dec. 30, 2002). At that time, FRA published an interim final rule carrying over the \$6,700 threshold from calendar year 2002 to 2003 and subsequent years until adoption of a new threshold. 49 CFR 225.19(c). FRA last revised the monetary threshold formula in 1996. 61 FR 30940 (June 18, 1996); 61 FR 60632 (November 29, 1996). The calendar year 2002 threshold has been retained because the BLS ceased publishing certain data required to compute the wage component of the calculation, *i.e.*, the average hourly earnings of production workers for Class I railroads and the National Railroad Passenger Corporation (Amtrak), due to inadequate sampling data. Specifically, the Class I railroads and Amtrak did not provide the monthly hours and earnings data for production workers that BLS needed to publish these numbers for calendar year 2002. BLS did not foresee a better response rate in future years and, as a result, changed its methodology and the information that it publishes. Therefore, it was not possible for FRA to calculate a new threshold for calendar years 2003 and beyond based on the existing formula.

Congress has given FRA some direction for modifying the procedure for calculating the threshold in 49 U.S.C. 20901(b): "[i]n establishing or changing a monetary threshold for the reporting of a railroad accident or incident, \* \* \* damage cost calculations" shall be based "only on publicly available information obtained from (A) the Bureau of Labor Statistics; or (B) another department, agency or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency or instrumentality." Congress allows an exception to this general rule only if the necessary data are not available from the sources described, and only after public notice and comment.

Pursuant to this 1992 direction from Congress, FRA issued an NPRM earlier this year proposing a new method for calculation of the monetary reporting threshold. 70 FR 20333 (April 19, 2005).