

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 232 and 252

[DFARS Case 2002–D001]

## Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

**SUMMARY:** DOD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1008 of the National Defense Authorization Act for Fiscal Year 2001. Section 1008 requires contractors to submit, and DOD to process, payment requests in electronic form.

**DATES:** *Effective date:* March 1, 2003.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before April 22, 2003.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2002–D001 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D001.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberlin, (703) 602–0289.

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

This interim rule adds a new DFARS subpart and a contract clause to implement section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The rule—

- Requires contractors to submit electronically, and DOD to process electronically, requests for payment under DOD contracts;
- Requires DOD to transmit any supporting documentation electronically within DOD;

- Identifies three acceptable electronic forms for transmission of payment requests; and

- Identifies six specific situations where using electronic payment methods is unduly burdensome.

DOD published a proposed DFARS rule in the **Federal Register** on May 31, 2002 (67 FR 38057). Seventeen respondents submitted comments on the rule. Based on an analysis of these comments, DOD has made substantive changes to the rule, and, therefore, has published an interim rule with another request for comments. The main difference between the proposed and interim rules is that one of the six exemption categories has changed. In the proposed rule, at DFARS 232.7002(a)(6), an exemption applied to cases where the Secretary of Defense determines that the requirement for using electronic means is unduly burdensome. In the interim rule, the exemption has been revised to apply in those cases where the contractor is unable to submit, or DOD is unable to receive, a payment request in electronic form, and the contracting officer, the payment office, and the contractor mutually agree to an alternative method. This revised exemption provides contracting officers the flexibility to work solutions to unique payment situations to ensure that contractors are paid on time for work they have performed. In addition, the interim rule revises the clause at DFARS 252.246–7000, Material Inspection and Receiving Report, to state that contractor submission of material inspection and receiving information by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA) electronic form fulfills the requirement for a material inspection and receiving report (DD Form 250).

A discussion of the comments on the proposed rule is provided below.

1. *Comment:* Completely support the rule as it will reduce administrative cost, time, and effort, and will further speed payment to the contractor. *DOD Response:* Concur.

2. *Comment:* Does the requirement to submit payment requests in electronic form apply to contracts without solicitations? *DOD Response:* Yes. “Solicitation” means any request to submit offers or quotations to the government, and, therefore, would cover the great majority of procurements. As indicated at DFARS 201.304(6), “The Director of Defense Procurement and Acquisition Policy publishes changes to the DFARS in the **Federal Register** and electronically via the World Wide Web. Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting

officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.” If no solicitation is issued, the rule applies to contracts issued after the effective date.

3. *Comment:* Recommend clarification in DFARS 232.7004 that the contract clause is only to be used in solicitations and contracts resulting from solicitations first issued after October 1, 2002. *DOD Response:* Do not concur. The normal practice is to cite the effective date in the **DATES** section of the **Federal Register** notice, and not in the regulations. This eliminates the need to revise the regulations later to remove obsolete dates. The effective date for this interim rule is March 1, 2003, to allow payment systems to complete the latest upgrades and provide military departments and defense agencies sufficient time to finalize implementation plans with contractors.

4. *Comment:* There are many problems with the WAWF–RA software application, such as—

a. The current version of WAWF–RA does not process Foreign Military Sales (FMS);

b. If a mistake is made when processing the electronic DD Form 250 (Material Inspection and Receiving Report), the program will not allow changes and the submitter has to initiate a completely new DD Form 250. If a change has to be made after the DD Form 250 is accepted, the payment request must be processed manually; and

c. Construction contracts should be exempt, because the percentage of completion progress payments under construction contracts require so much paperwork, and because the contracting officer needs to approve the invoice and make sure the progress payments are correct.

*DOD Response:* The WAWF–RA software is an evolving application and will mature over time. Various software modules/versions are currently in development that will process additional types of invoices in the future, such as FMS, construction contracts, and discounts. For example, the FMS module will be added to the WAWF–RA system in the spring of 2003. It is noted that, until such time as WAWF–RA processes the above mentioned types of invoices, the contracting officer may authorize a contractor to submit a payment request in other than electronic form (see DFARS 232.7002(a)(6)).

5. *Comment:* The respondent inquired about using WAWF–RA for a contract with the Defense Contract Management Agency (DCMA), but was advised that

WAWF-RA was still being tested. *DOD Response:* The various versions of WAWF-RA go through a number of tests before deployment. For example, WAWF-RA, Version 3.0, currently is being tested, with full deployment anticipated in the spring of 2003. The respondent needs to contact DCMA again for further guidance.

6. *Comment:* DOD has not yet put into place fully functional electronic commerce systems that interface with all DOD payment systems for all invoice types. For example, the WAWF-RA system will not currently accept the electronic submission of the following invoice types: performance-based payments, commercial financing requests, invoices containing withholds, corrected invoices, credit invoices, and classified invoices. *DOD Response:* Classified invoices are exempt from the electronic submission requirement in accordance with DFARS 232.7002(a)(3). The other types of invoices and financing requests will be addressed in a future version of WAWF-RA.

7. *Comment:* The benefits of DOD's successful "Direct Submittal" initiative needs to be retained. If invoices must be routed through WAWF-RA rather than directly to the payment systems, WAWF-RA functionally should enable "Direct Submittal" approved contracts to route automatically through to the payment office without any DCMA or Defense Contract Audit Agency (DCAA) manual intervention. To facilitate the electronic payment of invoice requests, government payment practices should be evaluated, and DCMA, DCAA, and the Defense Finance and Accounting Service (DFAS) should issue clear guidance to eliminate, wherever possible, invoice backup documentation and administrative contracting officer (ACO) approvals. *DOD Response:* Submission of invoices under "Direct Submittal" approved contracts will be addressed in a future WAWF-RA version, which is currently being tested.

8. *Comment:* The WAWF-RA system has a major problem, namely, it only allows for 1 MG of attachments. *DOD Response:* WAWF-RA is being modified to accept attachments up to 5 MG.

9. *Comment:* The respondent tried in the past to sign up for Web invoicing, but could not use the application because of a restriction on its use if the DD Form 250 (Material Inspection and Receiving Report) had to be signed by an ACO. Is the restriction still in effect, or is there another form of transmission that can accommodate a signed DD Form 250? *DOD Response:* DFARS 252.246-7000, Material Inspection and Receiving Report, has been revised to state that using WAWF-RA to submit

material inspection and receiving information fulfills the requirement for a DD Form 250. WAWF-RA will support ACOs electronically signing material inspection and receiving information when they are accepting supplies or services or when they are approving service invoices.

10. *Comment:* There is a conflict between the proposed DFARS coverage and the existing DFARS concerning the use of DD Form 250, which can be used as a receiving report and/or invoice. Suggest that the language in existing DFARS 246.370 or DFARS Appendix F, Material Inspection and Receiving Report, be revised to conform to the objectives of the WAWF-RA program. *DOD Response:* Concur. Each delivery of supplies or services (except deliveries under Fast Payment Procedures—FAR subpart 13.4) requires evidence of acceptance, which is normally documented by a DD Form 250. Prior to implementation of this rule, DFARS 252.246-7000 required the contractor to prepare and submit the DD Form 250 by following the instructions in DFARS Appendix F. The conflict arose because the DFARS required contractors to submit a paper copy of DD Form 250, whereas the proposed DFARS rule required contractors to submit payment requests, including material inspection and receiving reports, in electronic form. To eliminate the conflict, the rule has been revised at DFARS 252.246-7000 to state that contractor submission of material inspection and receiving information by using the WAWF-RA electronic form fulfills the requirement for a material inspection and receiving report.

11. *Comment:* Exclude DD Form 250 from initial coverage under DFARS 232.7002(b). It will be more cost-effective at the outset to allocate scarce resources to comply first with the statutory requirement for electronic submission of invoices and then focus on developing an electronic solution for processing the DD Form 250 receiving reports and other supporting documentation. *DOD Response:* Section 1008(a) Public Law 106-398, as implemented by DFARS 232.7002(b), directs DOD officials to process payment requests and "any additional documentation necessary to support the determination and payment" of the payment requests (e.g., material inspection and receiving information) electronically. The legislation does not permit exclusion of the information on the DD Form 250 from the electronic processing requirement, unless the contractor is not required to submit the payment request electronically.

12. *Comment:* October 1, 2002, is premature for implementation of this requirement:

a. Recommend that DOD not require electronic payment in solicitations until after June 30, 2003; this will give more time for the process to mature and for problems to be worked out.

b. The proposed implementation date of October 1, 2002, is not possible for several reasons, including that the WAWF-RA system is not sufficiently programmed to accept all contract invoices, and training will take time.

c. To avoid a huge influx of vendors on October 1, 2002, new solicitations over \$100,000 should be implemented on October 1, 2002, and solicitations under \$100,000 should be phased in over the next year.

d. For the past several years, the respondent's company has been in the process of converting to another electronic system, which will go live in the first quarter of 2003. The company intends to wait to switch to the government electronic data interchange (EDI) electronic invoicing system until it transitions to its new system.

e. Not all of DFAS Columbus Commercial Pay Services' entitlement systems will be capable of receiving and processing invoices and receiving reports electronically by the October 2002 implementation date.

f. DFAS Columbus systems will not be able to accommodate the variety of supporting documentation currently required to be submitted with invoices, e.g., the 591 Report on contracts issued by the Defense Reutilization and Marketing Service, and non-standard supporting documentation required for Public Vouchers (SF 1034).

g. Is the date of June 30, 2001, referred to in the **Federal Register** Background **SUPPLEMENTARY INFORMATION** correct, or should it be June 30, 2002?

*DOD Response:* The original applicability date for compliance with the electronic invoicing legislative requirement was June 30, 2001; however, the legislation also permitted DOD to delay implementation of section 1008 to no later than October 1, 2002. Accordingly, DOD published a notice in the **Federal Register** (66 FR 43841) on August 21, 2001, which announced a delay in implementation until October 1, 2002. Because DOD's automated payment systems were limited to certain types of payment requests, DOD was unable to meet the October 1, 2002, statutory implementation date. By March 1, 2003, the systems will be capable of processing nearly 100 percent of payment requests. For those systems that are not ready, the interim rule provides the contracting officer the

flexibility to work solutions to unique payment situations to ensure that contractors are paid on time for work they have performed.

13. *Comment:* Recommend that DOD establish reasonable and flexible grace periods to enable contractors to convert from paper invoices to electronic submissions as either new DOD payment systems or invoice types are incorporated into the WAWF-RA or other electronic systems. This flexibility should also specifically include permitting a contractor to use only one payment request system for all of its covered contracts. *DOD Response:* Partially concur. Use of an electronic form other than one of the forms listed at DFARS 232.7003(a) was already permitted by DFARS 232.7003(b)(1) of the proposed rule (now DFARS 232.7003(b)). The DFARS language does not prohibit the contractor from using one payment request system for all of its covered contracts. However, DOD has revised the rule at DFARS 252.232-7003(c) to permit, *either before or after contract award*, the contractor (with the agreement of the contracting officer and the payment office) to use a nonelectronic method in certain circumstances.

14. *Comment:* There has not been any word about WAWF-RA in several years. *DOD Response:* Information on DOD's WAWF-RA is readily available from numerous sources on the Internet, including: <http://www.wawftraining.com/> for online WAWF training; <https://rmb.ogden.disa.mil> for general information on WAWF or to register; [www.dcmamail.com](http://www.dcmamail.com) (click on Electronic Invoicing) for DCMA; [www.dfas.mil/ecedi](http://www.dfas.mil/ecedi) for DFAS; [www.disa.mil](http://www.disa.mil) and [wawf-ra@ncr.disa.mil](mailto:wawf-ra@ncr.disa.mil) for the Defense Information Systems Agency; and [www.peoards.navy.mil](http://www.peoards.navy.mil) (click on Initiatives, WAWF) for the Department of the Navy.

15. *Comment:* Training information and other assistance should be made available, particularly to small businesses, to assist in complying with the interim DFARS rule. It would also be beneficial for DOD to schedule public meetings to discuss important implementation actions required of both DOD activities and contractors. *DOD Response:* Information and training are readily available for contractors and DOD personnel via the Internet addresses identified in DOD Response to Comment #14. Computer-based training is also available on compact disk. DOD military departments and defense agencies also may provide supplemental training.

16. *Comment:* Field activities are not provided additional manning to implement electronic invoicing. Learning to use WAWF-RA is very time consuming, but easy to use after you learn how to use it. There are insufficient travel funds to train vendors in remote Alaskan locations. *DOD Response:* Refer to DOD responses to Comments #14 and #15.

17. *Comment:* Many small businesses will be unable to submit invoices electronically on their own. There is concern about small business contractors that are not on line yet. Some small businesses do not own a computer, and the rule may deter them from doing business with the government. The government's new e-payment requirement may alienate many small businesses. There will be a great deal of difficulty for DOD contractors, particularly small businesses, to comply with the rule. *DOD Response:* DOD invited small businesses to submit comments on the proposed DFARS rule; however, none were received. There is no indication from small business concerns that they will be unable to comply with the rule. In addition, the interim rule removes the higher-level waiver request provision of the proposed rule. The new paragraph (a)(6) of DFARS 232.7002 provides authority for the contracting officer to permit the contractor to submit a payment request using an alternative method, if the contracting officer, the payment office, and the contractor mutually agree.

18. *Comment:* Recommend including a definition of "unduly burdensome" and to whom it applies (contractor or payment office). *DOD Response:* The interim rule removed the term "unduly burdensome." Therefore, a definition is unnecessary.

19. *Comment:* DOD should acknowledge the implementation challenges and address enforcement accordingly. Initially, broad waiver polices should be issued, including requiring clear documentation as part of the contract file without the need for higher-level approvals. *DOD Response:* DOD agrees that higher-level approval of waiver requests is unnecessary. Accordingly, as indicated in DOD Response to Comment #17, the interim rule has been revised to provide authority to the contracting officer.

20. *Comment:* The following types of low volume invoices should be specifically enumerated in DFARS 232.7002(a)(6) (regarding SECDEF waiver if unduly burdensome): alternate liquidation rate billing adjustments, short payment refund requests, retroactive contract price change

billings, etc. *DOD Response:* It is inappropriate to waive low volume type invoices, e.g., short payment refund requests, retroactive contract price change billings, etc. (Alternate liquidation rate billing adjustments are not invoices but adjustments to prior billings.) Although current systems may not be able to accommodate electronic processing of them, it is anticipated that future editions of WAWF-RA, Web Invoicing System (WInS), or American National Standards Institute (ANSI) X.12 EDI formats will. If the government is unable to receive such payment requests in electronic form, DFARS 252.232-7003(c) permits the contractor, with the agreement of the contracting officer and the payment office, to use another method.

21. *Comment:* Recommend adding public voucher billings (SF 1034) for cost-reimbursement and time-and-materials contracts to the list of types of payment requests that the contractor must submit in electronic form. *DOD Response:* DFARS 252.232-7003(a)(3) defines payment requests as including both contract financing payments and invoice payments. DFARS 252.232-7003(a)(1) states that contract financing payments and invoice payments have the meanings given in FAR 32.001. Since public vouchers are a type of invoice payment, no change is needed to the rule.

22. *Comment:* Recommend adding a new paragraph (c) to DFARS 232.7002 to make it clear that, while submissions using electronic forms are required, the contracting officer and the contractor may authorize any individual payment request (or group of payment requests) otherwise required to use electronic forms to be submitted using other than electronic forms without constituting a violation of paragraph (b) or paragraph (d) of the 252.232-7003 contract clause. *DOD Response:* DOD agrees that the contracting officer should have discretion on whether to authorize the use of a method other than electronic form. However, rather than adding a new paragraph (c), the interim rule revises the exception at DFARS 232.7002(a)(6) to permit the contractor to submit the payment request in other than electronic form with the agreement of the contracting officer and the payment office.

23. *Comment:* Recommend adding to DFARS 232.7003(b), a description of an acceptable type of concurrence between the payment and contract administration offices, for example, MOU/MOA, or verbal. *DOD Response:* DOD believes it is preferable to provide sufficient flexibility to permit the parties (contracting officer, payment

office, and contract administration office) to use any method of documentation that the parties deem appropriate.

24. *Comment:* Recommend adding a new paragraph (7) to DFARS 232.7002(a) to exempt from the inclusion of the clause those situations where the contracting officer knows in advance of the release of the solicitation that, by the time of contract award, contractors will be unable to submit, or the Government will be unable to receive, payment requests using any of the electronic forms, or that there are invoice types for which no cost-effective electronic solution is available. In addition, recommend including a provision (identical to 252.232-7003(b)(4)) to DFARS 232.7003(a) that permits the contracting officer to authorize the use of another electronic form. This authority is particularly critical during the solicitation stage of a procurement. If used, the contracting officer must disclose in the appropriate place in the solicitation the alternatives to the electronic forms designated under 252.232-7003(b)(1) through (b)(3). Paragraph 232.7003(b) is insufficient because it only operates after contract award. *DOD Response:* DOD agrees that it is inappropriate to restrict the contracting officer's exemption authority to only those situations that occur after contract award, and that the exemption authority should apply to both solicitations (pre-award) and contracts (post-award). Accordingly, the interim rule has removed the phrase "after contract award," and provides the contracting officer the authority, either pre-award or post-award, to permit the contractor to use—

a. An electronic form other than one of the forms listed at DFARS 232.7003(a) (see DFARS 232.7003(b) and 252.232-7003(b)(4)); or

b. A nonelectronic method (see DFARS 232.7002(a)(6) and 252.232-7003(c)).

25. *Comment:* Recommend substituting the word "Government" for the word "DOD" in DFARS 232.7003(b)(2) to be more accurate in assessing capabilities and to be consistent with the use of the phrase in paragraph (c) of 252.232-7003. *DOD Response:* For consistency and because the DFARS only applies to DOD, the term "Government" has been changed to "DOD" in paragraph (c) of 252.232-7003.

26. *Comment:* Recommend adding "as designated by the contracting officer" at the end of the first sentence of 252.232-7003(b), because the contracting officer needs to designate the acceptable format for various reasons, such as

standardization at a command, and not all current forms are processed by WAWF-RA and WInS. *DOD Response:* DFARS 232.7003(a) identifies three acceptable electronic forms for the transmission of payment requests, namely, WAWF-RA, WInS, and the ANSI X.12 EDI formats. DOD believes that utilization of these standardized systems will result in more timely and efficient submission and processing of invoices, and will also facilitate timely and accurate payment. However, the proposed and the interim rules do authorize the contracting officer to permit another electronic format (e.g., a locally developed electronic format) if the payment office and the contract administration office concur (see DFARS 232.7003(b)).

27. *Comment:* Is there a need to include the agreement of the payment office (as in DFARS 232.7003(b)) in 252.232-7003(c) in order to permit the contractor to use another method of submission of payment requests? In contrast, one respondent recommends adding "and concurred with by the payment office" at the end of DFARS 252.232-7003(b)(4), and another recommends adding "and the payment office" at the end of DFARS 252.232-7003(c). *DOD Response:* Although the contracting officer does have to obtain agreement from the DOD payment office prior to authorizing the contractor to submit a payment request using a different electronic form, this action need not be stipulated in the contract clause at DFARS 252.232-7003. Provisions contained in the contract clause apply to the parties of the contract, namely, the contractor and the contracting officer. Internal DOD procedures need only be included in the text at DFARS subpart 232.70.

28. *Comment:* Recommend adding to DFARS 232.7003(b)(1) a description of electronic forms other than those listed. Need clarification of the description of "electronic form" in DFARS 252.232-7003(a)(2). Interpretation of the current wording could lead to the submission of faxed, e-mailed, or scanned documents that are not automatically uploaded into the respective entitlement system. These forms may not have the necessary internal controls associated with receiving these forms. *DOD Response:* The acceptable electronic forms for transmission are WAWF-RA, WInS, and ANSI X.12 EDI formats, as identified in DFARS 232.7003(a) and DFARS 252.232-7003(b). It is not practicable to attempt to list all other acceptable electronic forms of transmission that the contracting office may authorize. However, DOD agrees that faxed, e-mail, and scanned documents are not

considered acceptable electronic means of submission. Therefore, the interim rule revises the definition of "electronic form" at DFARS 252.232-7003(a)(2) by adding the following new sentence: "Facsimile, e-mail, and scanned documents are not acceptable electronic forms."

29. *Comment:* Recommend inserting the phrase "except as provided in 232.7002(a)" at the end of the sentence in DFARS 252.232-7003(a)(3) (i.e., definition of payment request) to recognize that, even though the basic contract payment requests are subject to the standard requirements for using electronic formats, there may be certain specific transactions permitted under the contract where electronic payments would not be feasible or desirable. *DOD Response:* Paragraph (a)(3) of DFARS 252.232-7003 simply defines "payment request." Since it does not address the electronic submission requirement, it would be inappropriate to include a reference to the exceptions in this definition.

30. *Comment:* The respondent is receiving modifications where line items have been established for incremental funding with inspection and acceptance requirements and delivery dates cited. There will not be anything delivered for this funding CLIN. The rule should specify that this type of CLIN should not be established as it impedes the closeout process, and reflects CLINs in the database that will never be satisfied and show up as delinquent line items. *DOD Response:* The comment is outside the scope of this case.

31. *Comment:* Some large businesses indicate that there will be costs for the government to pay for them to switch their method of invoicing. *DOD Response:* The costs to implement a revised method of invoicing is considered a normal cost of doing business and is usually recovered by the contractor as an indirect expense allocable to all contracts. DOD believes that the costs to implement electronic invoicing will be outweighed by the benefits received, such as reduced administrative cost, time, and effort; less payment errors; and more timely payments to contractors.

32. *Comment:* Recommend the use of a program called DESTRAP, which was developed by a local company to process Quality Deficient Reports Form 202. The government owns the rights to this program and it could be modified to use DD Form 250. *DOD Response:* Paragraph (b)(4) of DFARS 252.232-7003 permits the contracting officer to authorize the use of another electronic form.

33. *Comment:* Recommend adding the commercial item financing, FAR clauses 52.232–29 through 52.232–31, to the table in the **Federal Register**. *DOD Response:* The table in the **Federal Register** (67 FR 38057) listed five FAR clauses, currently approved by OMB, that require contractors to collect information in order to provide nonelectronic payment requests. DOD has added the commercial item financing FAR clauses at FAR 52.232–29, Terms for Financing of Purchases of Commercial Items, and FAR 52.232–30, Installment Payments for Commercial Items, to the table since these clauses include the requirement for the contractor to submit payment requests. FAR 52.232–31, Invitation to Propose Financing Terms, invites the offeror to propose terms under which the government will make performance-based contract financing payments during contract performance, but does not include the actual requirement for the contractor to submit payment requests, *i.e.*, performance-based financing payments. Therefore, FAR 52.232–31 has not been added to the table in paragraph C. (Paperwork Reduction Act) of the **Federal Register** notice.

34. *Comment:* Concerned that—  
 (a) DFAS cannot consistently process government purchase card electronic certifications for payment. How will they be consistent with contractors/vendors?

(b) DFAS's current system for receipt of RPR's, invoices, contracts (if not available through the standard procurement system-I) is not consistent; information must be sent multiple times before action/payment is made;

(c) 99 percent of payments made by the respondent's office utilize the government purchase card (an exception). Interest payments have been made to Citibank because of DFAS errors, loss of documents, etc.

*DOD Response:* The respondent's concerns apply to the government's internal operating procedures, not the proposed DFARS rule, and therefore are outside the scope of this case. However, results from the use of WAWF-RA so far indicate that its use substantially reduces interest payments. For example, DCMA has processed invoices valued at over \$700 million using WAWF-RA, with less than \$100 in interest penalties.

35. *Comment:* Prompt Payment Act implications regarding invoice receipt dates and the electronic return of improper invoices are not addressed. *DOD Response:* The provisions of the Prompt Payment Act apply to payment requests processed electronically. The Prompt Payment Act is addressed in FAR subpart 32.9 and DFARS subpart 232.9; therefore, it need not be addressed in this DFARS rule.

36. *Comment:* Recommend that DOD describe the interface(s) it will use to accommodate existing contractor systems and quickly publish a detailed implementation schedule for each invoice type, electronic solution, and DOD payment office. *DOD Response:* It is inappropriate to describe electronic interfaces in DFARS; the issue is beyond the scope of the subject case. The respondent's concern will be forwarded to the WAWF-RA Program Office for appropriate action.

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 does not expect this rule to 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 any start-up costs that contractors will incur to comply with the rule are expected to be minimal, and should be offset by the reduced administrative costs that are expected to result from the electronic submission and processing of invoices. In addition, the rule provides for an exemption to the requirement for electronic submission in cases where the contractor is unable to submit a payment request in electronic form. Therefore, DOD has not performed an initial regulatory flexibility analysis. DOD invites comments from small businesses and other interested parties. DOD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D001.

**C. Paperwork Reduction Act**

The rule does not impose any additional information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements for contractors to provide nonelectronic payment requests already have been approved by OMB as indicated below.

FAR clause number	Clause title	OMB control number	Expiration date
52.216–7 .....	Allowable Cost and Payment .....	9000–0069	Dec. 31, 2005
52.232–7 .....	Payments Under Time-and-Materials and Labor-Hour Contracts .....	9000–0070	July 31, 2005
52.232–12 .....	Advance Payments .....	9000–0073	July 31, 2005
52.232–16 .....	Progress Payments .....	9000–0010	Sept. 30, 2005
52.232–29 .....	Terms for Financing of Purchases of Commercial Items .....	9000–0138	Sept. 30, 2004
52.232–30 .....	Installment Payments for Commercial Items .....	9000–0138	Sept. 30, 2004
52.232–32 .....	Performance-Based Payments .....	9000–0138	Sept. 30, 2004

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary to implement section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398), which requires contractors to submit, and DOD

to process, payment requests in electronic form. The statutory date for implementation of the electronic invoicing requirement was October 1, 2002. However, because DOD's automated payment systems were limited to certain types of payment requests, DOD was unable to meet the October 1, 2002, implementation date. By March 1, 2003, DOD's automated systems will be capable of processing nearly 100 percent of payment requests.

Comments received in response to the publication of this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Parts 232 and 252**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

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

**PART 232—CONTRACT FINANCING**

2. Subpart 232.70 is added to read as follows:

**Subpart 232.70—Electronic Submission and Processing of Payment Requests**

Sec.

232.7000	Scope of subpart.
232.7001	Definitions.
232.7002	Policy.
232.7003	Procedures.
232.7004	Contract clause.

**232.7000 Scope of subpart.**

This subpart prescribes policies and procedures for submitting and processing payment requests in electronic form to comply with 10 U.S.C. 2227.

**232.7001 Definitions.**

*Electronic form and payment request*, as used in this subpart, are defined in the clause at 252.232-7003, Electronic Submission of Payment Requests.

**232.7002 Policy.**

(a) Contractors shall submit payment requests in electronic form, except for—

(1) Purchases paid for with a Governmentwide commercial purchase card;

(2) Awards made to foreign vendors for work performed outside the United States;

(3) Classified contracts or purchases (see FAR 4.401) when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security;

(4) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies;

(5) Purchases to support unusual or compelling needs of the type described in FAR 6.302-2; and

(6) Cases where—

(i) The contractor is unable to submit, or DOD is unable to receive, a payment request in electronic form; and

(ii) The contracting officer, the payment office, and the contractor mutually agree to an alternative method.

(b) DOD officials receiving payment requests in electronic form shall process the payment requests in electronic form. Any supporting documentation necessary for payment, such as receiving reports, contracts, contract modifications, and required certifications, also shall be processed in electronic form.

**232.7003 Procedures.**

(a) The accepted electronic forms for transmission are—

(1) Wide Area WorkFlow-Receipt and Acceptance (see Web site —<https://rmb.ogden.disa.mil>);

(2) Web Invoicing System (see Web site—<https://ecweb.dfas.mil>); and

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats (see Web site—<http://www.X12.org> for information on EDI formats; see Web site—<http://www.dfas.mil/ecedi> for EDI implementation guides).

(b) If the payment office and the contract administration office concur, the contracting officer may authorize a contractor to submit a payment request using an electronic form other than those listed in paragraph (a) of this section.

**232.7004 Contract clause.**

Except as provided in 232.7002(a), use the clause at 252.232-7003, Electronic Submission of Payment Requests, in solicitations and contracts.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****252.212-7001 [Amended]**

3. Section 252.212-7001 is amended as follows:

a. By revising the clause date to read “(MAR 2003)”; and

b. In paragraph (b) by adding, in numerical order, the entry “       252.232-7003 Electronic Submission of Payment Requests (MAR 2003) (10 U.S.C. 2227).”

4. Section 252.232-7003 is added to read as follows:

**252.232-7003 Electronic Submission of Payment Requests.**

As prescribed in 232.7004, use the following clause:

**Electronic Submission of Payment Requests (MAR 2003)**

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment and invoice payment* have the meanings given in section 32.001 of the Federal Acquisition Regulation.

(2) *Electronic form* means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms.

(3) *Payment request* means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests using one of the following electronic forms:

(1) Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA). Information regarding WAWF-RA is available on the Internet at <https://rmb.ogden.disa.mil>.

(2) Web Invoicing System (WInS). Information regarding WInS is available on the Internet at <https://ecweb.dfas.mil>.

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats.

(i) Information regarding EDI formats is available on the Internet at <http://www.X12.org>.

(ii) EDI implementation guides are available on the Internet at <http://www.dfas.mil/ecedi>.

(4) Another electronic form authorized by the Contracting Officer.

(c) If the Contractor is unable to submit a payment request in electronic form, or DoD is unable to receive a payment request in electronic form, the Contractor shall submit the payment request using a method mutually agreed to by the Contractor, the Contracting Officer, and the payment office.

(d) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payments requests.

(End of clause)

5. Section 252.246-7000 is revised to read as follows:

**252.246-7000 Material Inspection and Receiving Report.**

As prescribed in 246.370, use the following clause:

**Material Inspection and Receiving Report (MAR 2003)**

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA) electronic form (see paragraph (b)(1) of

the clause at 252.232-7003) fulfills the requirement for a material inspection and receiving report (DD Form 250).

(End of clause)

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222, 223 and 224

[Docket No. 000320077-2302-03; I.D. 062501B]

RIN 0648-AN62

#### Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is amending the turtle excluder device (TED) regulations to enhance their effectiveness in reducing sea turtle mortality resulting from trawling in the southeastern United States. NMFS has determined that: some current approved TED designs do not adequately exclude leatherback turtles and large, immature and sexually mature loggerhead and green turtles; several approved TED designs are structurally weak and do not function properly under normal fishing conditions; and modifications to the trynet and bait shrimp exemptions to the TED requirements are necessary to decrease lethal take of sea turtles. These amendments are necessary to protect endangered and threatened sea turtles in the Atlantic Area (all waters of the Atlantic Ocean south of the North Carolina/Virginia border and adjacent seas, other than the Gulf Area, and all waters shoreward thereof) and Gulf Area (all waters of the Gulf of Mexico west of 81° W. long. and all waters shoreward thereof).

**DATES:** This final rule will take effect April 15, 2003, however it is not applicable in the Gulf Area until August 21, 2003.

**ADDRESSES:** Copies of: Epperly, S. P. and W.G. Teas. 2002. Turtle excluder devices - Are the escape openings large enough? Fish. Bull. 100:466-474, can be obtained through the following Web site: <http://fishbull.noaa.gov/fcontent.htm>, or can be requested, along with copies of an Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis,

from the Protected Resources Division, Southeast Regional Office, 9721 Executive Center Drive, North, Suite 102 St. Petersburg, FL, 33702.

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**SUPPLEMENTARY INFORMATION:**

#### Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of trawling activities have been documented in the Gulf of Mexico and along the Atlantic Ocean seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206 and 50 CFR 224.104. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area, Gulf Area, and summer flounder sea turtle protection area, all as defined in 50 CFR 222.102) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED (the Parker soft TED).

The TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be at least 97 percent effective in excluding sea turtles during experimental TED testing (50 CFR 223.207(e)). The TED must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape. In the Atlantic Area, these requirements are currently ≥35 inches (≥89 cm) in width and ≥12

inches (≥30 cm) in height. In the Gulf Area, the requirements are ≥32 inches (81 cm) in width and ≥10 inches (≥25 cm) in height (these measurements are taken simultaneously).

The use of TEDs has contributed to population increases documented for Kemp's ridley turtles. Kemp's ridleys are the smallest sea turtle species, and adults can easily pass through the current TED opening dimensions. Once the most critically endangered sea turtle, Kemp's ridley nesting levels have increased from 700-800 per year in the mid-1980's to over 6,000 nests in 2000. Since 1990, corresponding with the more widespread use of TEDs in U.S. waters, the total annual mortality of Kemp's ridley turtles has been reduced by 44-50 percent (TEWG, 2000). NMFS believes that the use of TEDs has had a significant beneficial impact on the survival and recovery of sea turtle species.

NMFS is concerned that TEDs are not adequately protecting all species and size classes of turtles. There is new information showing that 33-47 percent of stranded loggerheads and 1-7 percent of stranded green turtles are too large to fit through the current TED openings. Comprehensive scientific data on the body depths of these turtles were not available when the original TED sizes were specified. The original TED sizes were also much too small to allow leatherback sea turtles the largest species to escape. Instead, NMFS has attempted to address the incidental catch of leatherbacks through a regime of reactive closures that has proven ineffective. There is also concern about the status of loggerhead and leatherback turtle populations: the northern nesting population of loggerheads appears to be stable or declining (TEWG, 2000) and nesting of leatherbacks is declining on several main nesting beaches in the western North Atlantic (NMFS SEFSC, 2001).

NMFS completed a biological opinion (Opinion) in December 2002, on Shrimp Trawling in the Southeastern United States, under the Sea Turtle Conservation Regulations and as managed by the Fishery Management Plans for Shrimp in the South Atlantic and Gulf of Mexico. Based on information in a NOAA technical memorandum completed in November 2002, (NOAA Technical Memorandum NMFS-SEFSC-490) the Opinion estimated that 62,000 loggerhead turtles and 2,300 leatherback turtles are killed as a result of an interaction with a shrimp trawl. Information in this Opinion also indicate that up to 75 percent of the loggerhead turtles in the Gulf of Mexico and about 2.5 percent of