

**DEPARTMENT OF DEFENSE****48 CFR Part 223****[DFARS Case 2001–D005]****Defense Federal Acquisition Regulation Supplement; Use of Recovered Materials****AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove approval requirements pertaining to the acquisition of items that do not meet Environmental Protection Agency (EPA) minimum recovered material standards. The DFARS requirements are no longer necessary as a result of changes made to the Federal Acquisition Regulation (FAR) in Item III of Federal Acquisition Circular (FAC) 97–18.

**EFFECTIVE DATE:** October 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberlin, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2001–D005.

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

This final rule—

- Removes DFARS 223.404(b)(3). FAR 223.404(b)(3) had required a written determination approved by an official designated by the agency head if the agency was acquiring EPA designated items that did not meet the EPA minimum recovered material standards. DFARS 223.404(b)(3) designated the approval officials for DoD. Since Item III of FAC 97–18 (65 FR 36016, June 6, 2000) removed the written determination requirement from the FAR, the corresponding levels of approval are removed from the DFARS; and

- Moves the text at DFARS 223.404(b)(4) to DFARS 223.405(d), since Item III of FAC 97–18 moved the corresponding text from FAR 223.404(b)(4) to FAR 223.405(d).

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

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is

not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2001–D005.

**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 223**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 223 is amended as follows:

1. The authority citation for 48 CFR Part 223 continues to read as follows:

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

**PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE****223.404 [Removed]**

2. Section 223.404 is removed.

3. Section 223.405 is added to read as follows:

**223.405 Procedures.**

(d) Departments and agencies must centrally collect information submitted in accordance with the clause at FAR 52.223–9 for reporting to the Office of the Deputy Under Secretary of Defense (Environmental Security).

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**DEPARTMENT OF DEFENSE****48 CFR Parts 232 and 252****[DFARS Case 2001–D012]****Defense Federal Acquisition Regulation Supplement; Customary Progress Payment Rate for Large Business Concerns****AGENCY:** Department of Defense (DoD).**ACTION:** Final rule.

**SUMMARY:** DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to increase the customary uniform progress payment rate for large business concerns from 75 percent to 80 percent. The progress payment rate change is applicable only

to contract awards made on or after October 1, 2001. Contracts awarded before October 1, 2001, will not be modified to include the 80 percent rate.

**EFFECTIVE DATE:** October 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberlin, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2001–D012.

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

This final DFARS rule conforms the DoD customary uniform progress payment rate for large business concerns with the progress payment rate for large business concerns currently being used by other Executive agencies under Federal Acquisition Regulation 32.501–1(a).

This final rule is unchanged from the proposed rule that was published at 66 FR 44589 on August 24, 2001. DoD received two comments in response to the proposed rule. Both comments were in favor of the rule.

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 makes no change to the progress payment rates for small business and small disadvantaged business concerns.

**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 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. Section 232.501–1 is revised to read as follows:

**232.501–1 Customary progress payment rates.**

(a) The customary progress payment rates for DoD contracts, including contracts that contain foreign military sales (FMS) requirements, are 80 percent for large business concerns, 90 percent for small business concerns, and 95 percent for small disadvantaged business concerns.

3. Section 232.502–4–70 is amended by revising paragraph (b) to read as follows:

**232.502–4–70 Additional clauses.**

\* \* \* \* \*

(b) Use the clause at 252.232–7004, DoD Progress Payment Rates, instead of Alternate I of the clause at FAR 52.232–16, if the contractor is a small business or small disadvantaged business concern.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Section 252.232–7004 is revised to read as follows:

**252.232–7004 DoD Progress Payment Rates.**

As prescribed in 232.502–4–70(b), use the following clause:

DOD Progress Payment Rates (Oct. 2001)

(a) If the contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 90 percent.

(b) If the contractor is a small disadvantaged business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 95 percent.

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**DEPARTMENT OF DEFENSE****48 CFR Parts 243, 248, and 252**

[DFARS Case 2001–D001]

**Defense Federal Acquisition Regulation Supplement; Cancellation of MIL–STD–973, Configuration Management**

AGENCY: Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove references to a cancelled military standard that prescribed a format for preparation of engineering change proposals.

**EFFECTIVE DATE:** October 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2001–D001.

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

This final rule removes the clauses at DFARS 252.243–7000, Engineering Change Proposals, and 252.248–7000, Preparation of Value Engineering Change Proposals, and the corresponding clause prescriptions at DFARS 243.205–70 and 248.270. DoD used these clauses to require submission of engineering change proposals in the format prescribed by MIL–STD–973, Configuration Management. MIS–STD–973 was cancelled without replacement on September 20, 2000. Therefore, this final rule removes the clauses that were based on the requirements of MIL–STD–973. General policy regarding engineering change proposals is removed from DFARS 243.205–70 to a more appropriate location at 243.204–71.

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

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2001–D001.

**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 Parts 243, 248, and 252**

Government procurement.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 243, 248, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 243, 248, and 252 continues to read as follows:

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

**PART 243—CONTRACT MODIFICATIONS**

2. Section 243.204–71 is added to read as follows:

**243.204–71 Engineering change proposals.**

Engineering changes can originate with either the contractor or the Government. In either case, the Government will need detailed information from the contractor for evaluation of the technical, cost, and schedule effects of implementing the change.

**243.205–70 [Removed]**

3. Section 243.205–70 is removed.

**243.205–71 [Redesignated as 243.205–70]**

4. Section 243.205–71 is redesignated as 243.205–70.

**243.205–72 [Redesignated as 243.205–71]**

5. Section 243.205–72 is redesignated as 243.205–71.

**PART 248—[REMOVED]**

6. Part 248 is removed.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****252.243–7000 [Removed and Reserved]**

7. Section 252.243–7000 is removed and reserved.

**252.243–7001 [Amended]**

8. Section 252.243–7001 is amended in the introductory text by removing “243.205–71” and adding in its place “243.205–70”.

**252.243–7002 [Amended]**

9. Section 252.243–7002 is amended in the introductory text by removing “243.205–72” and adding in its place “243.205–71”.