since the July 1995 submittal to resolve all the issues necessary to fully approve the 15% plan. Maryland is aware of the above deficiencies and has addressed many of the above-named deficiencies in the draft revised plan. Maryland has stated that it intends to submit additional information to address all deficiencies within the 15% plan. Therefore, while some deficiencies currently remain in the 15% plan, EPA believes that these issues will be resolved no later than 12 months after EPA's final conditional approval. EPA will consider all information submitted as a supplement or amendment to the July 1995 submittal prior to any final rulemaking action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more.

Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(a) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

The Regional Administrator's decision to approve or disapprove the SIP revision pertaining to the Maryland 15% plan for the Metropolitan Washington, DC area will be based on whether it meets the requirements of section 110(a)(2)(a)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: May 28, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–14717 Filed 6–4–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 214 and 215

[DFARS Case 97–D011]

Defense Federal Acquisition Regulation Supplement; Distribution of Contract Financing Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that, when a contract contains multiple accounting classification citations and a provision for contract financing payments, the contract also shall include instructions adequate to permit the paying office to distribute the contract financing payments in proportions that reasonably reflect the performance of work under the contract.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 97–D011 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:

Ms. Melissa Rider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Subpart 214.2, Solicitations of Bids, and Subpart 215.4, Solicitation and Receipt of Proposals and Quotations, to indicate that, when a contract contains multiple accounting classification citations and includes a provision for contract financing payments, the contracting officer shall provide instructions adequate to permit the payment office to distribute the contract financing payments in proportions that reasonably reflect the performance of work on the contract. The contracting officer is required to use one of four alternative approaches for developing the payment instructions.

B. Regulatory Flexibility Act

The proposed rule is not expected 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 the rule primarily pertains to internal Government accounting procedures. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D011 in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 214 and 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 214 and 215 be amended as follows:

1. The authority citation for 48 CFR parts 214 and 215 continues to read as follows:

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

PART 214—SEALED BIDDING

2. Section 214.201–2 is added to read as follows:

214.201–2 Part I—The Schedule.

(g) *Section G, Contract administration data.* When a contract contains multiple accounting classification citations and includes a provision for contract financing payments (see FAR 32.902), the contracting officer shall provide instructions based on one of the following alternatives, adequate to permit the paying office to distribute the contract financing payment in proportions that reasonably reflect the performance of the work on the contract. Payment instructions shall not be selected solely on the basis of administrative convenience. The payment instructions may be updated as necessary.

(i) *Contract financing payments based on information supplied in accordance with contract requirements.* Payments will be made in a manner consistent with information provided by the contractor as a result of a contract requirement. For example, payment could be based on:

(*A*) A payment distribution profile developed by the contracting officer from a contract funds status report, or other form of cost reporting, that identifies actual funds usage by contract line item (or subline item) (CLIN/SLIN); or

(*B*) Information contractually required to be included on the contractor's payment request, identifying the amount of payment to be made for each CLIN/SLIN against which payment is requested.

(ii) *Contract financing payments based on a unique payment distribution profile.* Payments will be based on a payment distribution profile established by the contracting officer at contract award or as revised during contract performance. The profile must indicate, for each anticipated payment, a percentage apportionment by CLIN/SLIN, based on anticipated contract performance. Payment distribution profiles may be derived from information supplied by the contractor, contract administration office, program office, or elsewhere. Payment profiles may reflect a combination of the other alternatives described herein; however, each CLIN/SLIN may use only one method (see 204.7103–1 and 204.7104–1).

(iii) *Contract financing payments distributed on a proportionate percentage basis.* Payments will be distributed on a proportionate percentage basis against all CLINs/SLINs when a best estimate of contractor work performance supports an assumption that work will be performed supports an assumption that work will be performed for all CLINs/SLINs in a relatively proportionate manner.

(iv) *Contracting financing payments using oldest funds first.* This payment method should be used only when other payment instruction options are not practicable. When used, payments will be made from the appropriate accounting classification citations in a sequence that enables exhaustion of the oldest fiscal year financing appropriation, before payments are made from more recent fiscal year appropriations. This form of payment instruction most typically applies to requirements that are funded by research, development, test and evaluation appropriations for successive fiscal years.

3. Section 214.201–9 is added to read as follows:

214.201–9 Simplified contract format.

(b) *Contract schedule.*

(8) See 214.201–2(g) for contracts that contain multiple accounting classification citations and include a provision for contract financing payments.

PART 215—CONTRACTING BY NEGOTIATION

4. Section 215.406–2 is revised to read as follows:

215.406–2 Part I—Schedule.

(g) *Section G, Contract administration data.*

(i) When a contract contains both fixed-price and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

(ii) When a contract contains multiple accounting classification citations and includes a provision for contract financing payments (see FAR 32.902), the contracting officer shall provide instructions based on one of the following alternatives, adequate to permit the paying office to distribute the contract financing payment in proportions that reasonably reflect the performance of the work on the contract. Payment instructions shall not be selected solely on the basis of administrative convenience. The payment instructions may be updated as necessary.

(A) *Contract financing payments based on information supplied in accordance with contract requirements.* Payments will be made in a manner consistent with information provided by the contractor as a result of a contract

requirement. For example, payment could be based on:

(*1*) A payment distribution profile developed by the contracting officer from a contract funds status report, or other form of cost reporting, that identifies actual funds usage by contract line item (or subline item) (CLIN/SLIN); or

(*2*) Information contractually required to be included on the contractor's payment request, identifying the amount of payment to be made for each CLIN/SLIN against which payment is requested.

(B) *Contract financing payments based on a unique payment distribution profile.* Payments will be based on a payment distribution profile established by the contracting officer at contract award or as revised during contract performance. The profile must indicate, for each anticipated payment, a percentage apportionment by CLIN/SLIN, based on anticipated contract performance. Payment distribution profiles may be derived from information supplied by the contractor, contract administration office, program office, or elsewhere. Payment profiles may reflect a combination of the other alternative described herein; however, each CLIN/SLIN may use only one method (see 204.7103–1 and 204.7104–1).

(c) *Contract financing payments distributed on a proportionate percentage basis.* Payments will be distributed on a proportionate percentage basis against all CLIN/SLINs when a best estimate of contractor work performance supports an assumption that work will be performed for all CLIN/SLINs in a relatively proportionate manner.

(D) *Contract financing payments using oldest funds first.* This payment method should be used only when other payment instruction options are not practicable. When used, payments will be made from the appropriate accounting classification citations in a sequence that enables exhaustion of the oldest fiscal year financing appropriation, before payments are made from more recent fiscal year appropriations. This form of payment instruction most typically applies to requirements that are funded by research, development, test and evaluation appropriations for successive fiscal years.

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[Docket No. 96–D021]

Defense Federal Acquisition Regulation Supplement; Contingent Fees-Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation supplement (DFARS) to permit payment of contingent fees in excess of $50,000 per foreign military sale case under a government contract, if the foreign customer approves the payment in writing before contract award.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, *Attn:* Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D021 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to the interim rule published in the **Federal Register** on January 17, 1997 (62 FR 2616). The interim rule amended DFARS Subpart 225.73 and the clauses at 252.212–7001 and 252.225–7027 for conformance with revisions made to the Federal Acquisition Regulation pertaining to contingent fee arrangements. As a result of public comments received on the interim rule, this proposed rule removes the prohibition on payment of contingent fees exceeding $50,000 for foreign military sales, and instead permits payment of contingent fees exceeding $50,000 per foreign military sale case if the foreign customer agrees to such fees in writing before contract award.

B. Regulatory Flexibility Act

The proposed rule is not expected 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 most firms that pay or receive contingent fees on foreign military sales are not small business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 96–D021 in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 225 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under defense contracts provided that the fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4).

(b) (1) Under DoD 5105.38–M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of contingent fees unless the payments have been identified and approved in writing by the foreign