

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. To the extent that the rule affects the mining of energy minerals (*i.e.*, uranium and other fissionable metals), the rule may save mining claims or sites that would otherwise be forfeited for the late payment of insufficient location and/or maintenance fees. It will not change financial obligations of the mining industry.

**Authors**

The principal author of this interim rule is Roger Haskins in the Solid Minerals Group, assisted by Frank Bruno in the Regulatory Affairs Group, Washington Office, BLM.

**List of Subjects in 43 CFR Part 3834**

Maintenance fees; mines; public lands—mineral resources; reporting and record keeping requirements.

Dated: August 26, 2005.

**Chad Calvert,**

*Acting Assistant Secretary, Land and Minerals Management.*

■ For the reasons stated in the preamble, and under the authority of sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201 and 1457); and sections 2319 and 2324 of the Revised Statutes, as amended (30 U.S.C. 22 and 28); part 3834, Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows:

**PART 3834—REQUIRED FEES FOR MINING CLAIMS OR SITES**

■ 1. The authority citation for part 3834 continues to read as follows:

**Authority:** 30 U.S.C. 28f; 30 U.S.C. 242; 43 U.S.C. 1201, 1740; 115 Stat 414.

**Subpart B—Fee Adjustment**

■ 2. Revise § 3834.21 to read as follows:

**§ 3834.21 How will BLM adjust the location and maintenance fees?**

BLM will adjust the location and maintenance fees at least every 5 years, based upon the CPI, as required by 30 U.S.C. 28j(c), or at any other time as required by other statute.

■ 3. Revise § 3834.23 to read as follows:

**§ 3834.23 When do I start paying the adjusted fees?**

(a) In the case of a CPI adjustment required by 30 U.S.C. 28j(c), you must pay the adjusted initial maintenance

and location fees when you record a new mining claim or site located on or after the September 1 that immediately follows the date BLM published its notice about the adjustment.

(b) In the case of adjustments required by other statute, you must pay the adjusted initial maintenance and location fees for a new mining claim or site as provided in the statute.

(c) For previously recorded mining claims and sites, you must pay the CPI-based adjusted maintenance fee on or before the September 1 that immediately follows the date BLM published its notice about the adjustment.

(d) Notwithstanding 43 CFR 3830.91(a)(3) and 3830.96, in any year in which BLM adjusts the maintenance and location fees, if you pay the fees timely, but pay an amount based on the fee in effect immediately before the adjustment was made, BLM will send you a notice, as provided in § 3830.94, giving you 30 days in which to pay the additional amount required to meet the adjusted fees. If you do not pay the additional amount due within 30 days after the date you received the notice, you will forfeit the affected mining claims or sites.

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 225 and 252**

**[DFARS Case 2004–D034]**

**Defense Federal Acquisition Regulation Supplement; Restrictions on Totally Enclosed Lifeboat Survival Systems**

**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 text addressing restrictions on the acquisition of totally enclosed lifeboat survival systems. The restrictions are based on fiscal year 1994 and 1995 appropriations act provisions, that are no longer considered applicable, and other statutory provisions that apply only to the Navy.

**DATES:** Effective September 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2004–D034.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule removes DFARS 225.7008, Restrictions on totally enclosed lifeboat survival systems, and the corresponding contract clause at DFARS 252.225–7039. These restrictions implement Section 8124 of the Fiscal Year 1994 DoD Appropriations Act (Pub. L. 103–139), Section 8093 of the Fiscal Year 1995 DoD Appropriations Act (Pub. L. 103–335), and 10 U.S.C. 2534. The fiscal year 1994 and 1995 appropriations act restrictions are no longer considered applicable. 10 U.S.C. 2534 applies to the acquisition of totally enclosed lifeboats that are components of naval vessels. Since this restriction impacts only the Navy, and 10 U.S.C. 2534(h) specifies that DoD may not use contract clauses or certifications, but must use management and oversight techniques, to implement this restriction, DFARS coverage for implementation of this restriction is considered unnecessary.

DoD published a proposed rule at 70 FR 14628 on March 23, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 domestic source restrictions of 10 U.S.C. 2534 still apply to the acquisition of totally enclosed lifeboats that are components of naval vessels. 10 U.S.C. 2534 requires that DoD acquire such lifeboats only if the manufacturer is part of the national technology and industrial base.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not contain 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 225 and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 225 and 252 are 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****225.7008 [Removed and Reserved]**

■ 2. Section 225.7008 is removed and reserved.

**225.7008–1 through 225.7008–4 [Removed]**

■ 3. Sections 225.7008–1 through 225.7008–4 are removed.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****252.225–7039 [Removed and Reserved]**

■ 4. Section 252.225–7039 is removed and reserved.

[FR Doc. 05–17351 Filed 8–31–05; 8:45 am]

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**DEPARTMENT OF DEFENSE****48 CFR Parts 232 and 252**

[DFARS Case 2004–D033]

**Defense Federal Acquisition Regulation Supplement; Levy on Payments to Contractors**

**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 address the effect of Internal Revenue Service (IRS) levies on contract payments. The rule requires DoD contractors to promptly notify the contracting officer if a levy that will jeopardize contract performance is imposed on a contract.

**DATES:** *Effective date:* September 1, 2005.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before October 31, 2005 to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2004–D033, using any of the following methods:

○ Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

○ E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2004–D033 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Mr. Bill Sain, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Sain, (703) 602–0293.

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

The Debt Collection Improvement Act of 1996 authorized a centralized program for the offset of Federal payments, including contract payments to collect delinquent non-tax debts owed to the Federal Government. To implement this authority, the Department of the Treasury created the Treasury Offset Program (TOP). The Taxpayer Relief Act of 1997 authorized the Internal Revenue Service to continuously levy up to 15 percent of certain Federal payments, including contract payments. To implement this authority, the Federal Payment Levy Program (FPLP) was created. The FPLP is an automated process that uses the TOP system to match delinquent tax debts with Federal payments. When a match occurs, the payment is levied and applied to the tax debt. The FPLP process works in tandem with a manual “paper” levy process outlined in 26 U.S.C. 6331–6332.

Section 887, Modification of Continuing Levy on Payments to Federal Vendors, of Public Law 108–357 amends Section 6331(h) of the Internal Revenue Code by raising the amount of levy the Government may withhold on Federal payments for goods or services sold or leased to the Federal Government, from 15 percent to 100 percent.

This interim DFARS rule is intended to address contract non-performance that may result from application of a levy.

**New Contract Clause Stating Government Right To Assess Levy**

While DoD has been participating in the levy program for a number of years, neither the FAR nor the DFARS includes a clause addressing levies. DoD believes that such a clause, along with implementing DFARS language in Part 232, is needed to ensure that all parties understand their rights and obligations related to the assessment of a levy.

**Levies That Jeopardize Contract Performance**

DoD is concerned that situations may arise in which the levy of a contract payment could jeopardize contract performance. As such, the DFARS needs to include coverage addressing the process to be followed when such situations arise.

The levy process makes it impractical, in most cases, to identify whether a levy will jeopardize contract performance prior to a contract payment being levied. While the contractor may have received a notice of potential levy, that notice does not identify which contract or contracts to which the levy will be applied. Furthermore, it is the contractor's responsibility for identifying a levy that will significantly impact contract performance, since it is the contractor's liability that has created the situation. Therefore, this interim rule requires that the contractor notify the contracting officer when a levy is imposed on a DoD contract payment and that the contractor state whether it believes the levy jeopardizes contract performance. In addition, the contractor is required to advise the contracting officer if the contractor is aware of any adverse effect on national security that may result from the inability to perform the contract. The contracting officer will take appropriate action on the instant contract.

When the contractor believes the levy jeopardizes contract performance, it is important that DoD have a timely process for addressing those cases. The interim rule requires the Government to promptly review the contractor's assessment and either agree or disagree that contract performance will be jeopardized. When the Government disagrees with the contractor's assessment, the Government will notify the contractor and no further action will be taken. When the Government agrees with the contractor's assessment that the levy will jeopardize contract performance and also believes that the lack of performance will adversely affect national security, some or all of the monies collected will be returned to the contractor. When the Government