

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.