

§ 4.06–5 Responsibility of individuals directly involved in serious marine incidents.

(a) Any individual engaged or employed on board a vessel who is determined to be directly involved in a SMI must provide blood, breath, saliva, or urine specimens for chemical testing required by § 4.06–20 when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide blood, breath, saliva, or urine specimens, this refusal must be noted on form CG–2692B and in the vessel's official log book, if one is required. The marine employer must remove the individual from duties that directly affect the safe operation of the vessel as soon as practicable.

(c) Individuals subject to alcohol testing after an SMI are prohibited from consuming alcohol beverages for eight (8) hours following the occurrence of the SMI, or until after the alcohol testing required by this part is completed.

(d) No individual may be compelled to provide specimens for alcohol and drug testing required by this part; however, refusal is a violation of regulations and may subject the individual's to suspension and revocation proceedings under part 5 of this chapter and/or a civil penalty.

§ 4.06–10 [Removed]

5. Remove § 4.06–10.

6. Add § 4.06–15 to read as follows:

§ 4.06–15 Availability of chemical testing devices.

(a) *Alcohol testing.* The marine employer must have sufficient devices capable of determining the presence of alcohol in an individual's system onboard the vessel for use to meet the alcohol testing requirements found under § 4.06–3 of this part.

(b) *Drug testing.* The marine employer must have urine specimen collection and shipping kits meeting the requirements of 49 CFR part 40 that are readily available for use following SMIs. The specimen collection and shipping kits need not be carried aboard each vessel if obtaining the kits and conducting the required drug tests can be completed within 32 hours from the time of the occurrence of the SMI.

7. Revise § 4.06–20 to read as follows:

§ 4.06–20 Specimen collection requirements.

(a) *Alcohol testing.* (1) When conducting alcohol testing required in § 4.06–3(a), an individual determined under this part to be directly involved in the SMI must provide a specimen of their breath, blood, or saliva to the

marine employer as required in this subpart.

(2) Collection of an individual's blood to comply with § 4.06–3(a) must be taken only by qualified medical personnel.

(3) Collection of an individual's saliva or breath to comply with § 4.06–3(a) must be taken only by personnel trained to operate the alcohol-testing device in use and must be conducted in accordance with this subpart.

(b) *Drug testing.* When conducting drug testing required in § 4.06–3(b), an individual determined under this part to be directly involved in the SMI must provide a specimen of their urine in accordance with 46 CFR part 16 and 49 CFR part 40.

8. Add § 4.06–70 to read as follows:

§ 4.06–70 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115.

Dated: February 24, 2003.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

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

[DFARS Case 2002–D017]

Defense Federal Acquisition Regulation Supplement; Payment Withholding

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials or labor-hour contract unless otherwise prescribed in the contract Schedule. The proposed rule would permit, but not require, the administrative contracting officer (ACO) to withhold payment amounts if the ACO determines the withholding to be necessary to protect the Government's interests.

DATES: DoD will consider all comments received by April 29, 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. Please cite DFARS

Case 2002–D017 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–D017.

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**

Federal Acquisition Regulation (FAR) 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, requires the contracting officer to withhold 5 percent of the amounts due, up to a maximum of \$50,000, unless otherwise specified in the contract Schedule. The Government retains the withheld amount until the contractor executes and delivers, at the time of final payment, a release discharging the Government from all liabilities, obligations, and claims arising under the contract.

This rule proposes to add DFARS 232.111(b) and DFARS 252.232–7XXX, Alternate A, to specify that, normally, there should be no need to withhold payments when dealing with contractors that typically comply with contractual requirements in a timely manner. This is in contrast to the current requirement in time-and-materials and labor-hour contracts that contracting officers must withhold payments unless other direction is provided in the contract.

DoD is considering revising its policy because the current withholding provisions are administratively burdensome and may, in some situations, result in the withholding of amounts that exceed reasonable amounts needed to protect the Government's interests. In addition, the contractor is already incentivized to execute and deliver the release discharging the Government from all liabilities, obligations, and claims under the contract, since this release is a condition for final payment.

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