



HEADQUARTERS

POLICY FLASH

POLICY FLASH 2003-32

DATE: December 11, 2003
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Amendment of the Department of Energy Acquisition Regulation (DEAR) To Revise Conditional Payment of Fee Clause**

SUMMARY: This Policy Flash summarizes the interim final rule published in the Federal Register on December 10, 2003, at 68 FR 68771, amending the DEAR to revise the current conditional payment of fee clause.

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This interim final rule elaborates on the current policy dealing with reductions in fee and other payments to contractors due to their performance failures in carrying out contract obligations related to: (1) safeguarding classified information; and (2) protection of environment, health and safety, including the health and safety of workers at contract sites. It specifies various degrees of violations and the amount of the reduction attributable to each degree of violation. It replaces the current clause for management and operating contracts and adds three clauses for other than management and operating contracts.

The rule reflects requirements included in Section 3147 of the National Defense Authorization Act for Fiscal Year 2000 that added section 234B to the Atomic Energy Act (42 U.S.C. 2282b) related to violations of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The rule also reflects requirements included in section 3173 of the National Defense Authorization Act for Fiscal Year 2003 that added section 234C to the Atomic Energy Act (42 U.S.C. 2282c) related to contractors who have entered into an agreement of Price Anderson indemnification who violate any regulation promulgated to protect worker safety and health (WS&H).

The Notice of Proposed Rulemaking (NPR) of February 1, 2001, contained proposed amendments to the DEAR that were consistent with the subsequently enacted requirements of section 234C. A few minor amendments to the NPR, however, were necessary to address specifically the new section 234C. Those amendments are the Interim Rule portion of this Interim Final Rule, and DCE is providing an opportunity for public comment limited to the minor amendments.

The Electronic DEAR on the Home Page will be updated to reflect this rule.

Please contact Michael Righi at (202) 586-8175 or at Michael.Righi@hq.doe.gov if you have questions.



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