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FOREIGN MILITARY SALES INDEBTEDNESS AND ARREARAGES0501 INTRODUCTION

050101. Objective. This chapter contains guidance for identifying foreign military sales (FMS) indebtedness and arrearages, and for applying interest charges for the arrearages. Policy and procedures for collecting and reporting FMS indebtedness and arrearages is contained in [Volume 6A, Chapter 12](#), of this Regulation. Policy and procedures for preparing and updating payment schedules are contained in [Chapter 4](#) of this volume, and policy and procedures for preparing Foreign Military Sales (FMS) billing statements are contained in [Chapter 8](#) of this volume.

050102. Responsibilities

A. The Department of Defense (DoD) Components are responsible for initiating timely and appropriate actions to update payment schedules to ensure cash is available to support outlay requirements, including disbursements to reimburse DoD accounts for earned reimbursements and disbursements to contractors for contract payments, contract holdbacks, and estimated termination liability costs. Payment schedules shall be updated annually on the anniversary of the implementation of each major case, in preparation for an annual FMS review, or when the value of a case increases by 10 percent or more--whichever occurs first. Payment schedules also shall be reviewed when changes are made to individual cases or case lines (e.g., to reflect a slip in delivery schedule), as discussed in subparagraph 130401.F. of the Security Assistance Management Manual (DoD 5105.38-M) (reference (c)).

B. The Defense Security Cooperation Agency (DSCA) is the principal DoD Component responsible for matters concerning FMS indebtedness requirements and issues. For non-FMS foreign indebtedness requirements, refer to [Volume 6A, Chapter 12](#), of this Regulation. The DSCA also is responsible for approving FMS feeder arrearage reports prepared by the Defense Finance and Accounting Service-Denver, Directorate of Security Assistance (DFAS-AY/DE). Those FMS reports are incorporated into a single consolidated DoD arrearage report that is submitted to the Department of the Treasury. When insufficient funds are available for the Department to meet the collective cash requirements for an FMS purchaser, the DSCA is responsible for working with the purchaser, the responsible DoD Component and the DFAS-AY/DE to identify the specific issue and remedy, e.g., adjustments to ordered values, delivery timeframes, ordered quantity, collection of additional funds or other alternative financial arrangements.

C. The DFAS-AY/DE shall utilize updated payment schedules and other financial performance criteria to bill foreign governments and international organizations on the quarterly "FMS Billing Statement" (DD Form 645) or special billing statements approved by the DSCA. See subparagraph 050202.B, below.

0502 REQUIREMENTS050201. Legal Requirements

A. For sales from stock, section 21(b) of the Arms Export Control Act (AECA) (reference (a)) requires the Department to collect payments from foreign purchasers in advance or, if the President determines it to be in the national interest, upon the delivery of a defense article or the rendering of a defense service. For sales from procurements, section 22(a) of the AECA requires the Department to collect payments from foreign purchasers in time to meet contractual payments, including any damages and costs that may accrue from the cancellation of such contracts.

B. After a determination by the President that it is in the national interest to bill upon the delivery of a defense article or the rendering of a defense service, interest shall be charged, in accordance with section 21(d) of the AECA, on any net amount due and payable which is not paid within 60 days after the date of such billing. Section 22(a) of the AECA requires that interest shall be charged on any net amount by which a foreign purchaser is in arrears under all of its outstanding unliquidated dependable undertakings, collectively considered.

050202. Policy Requirements

A. Payment Schedules. The policy in [Chapter 4](#) of this volume requires payment schedules developed by the DoD Components to include an amount to cover 3 months of anticipated expenses (including prepaid termination liability) and 3 months of work in process. The payment schedules, which formally are incorporated into letters of offer and acceptance (LOAs), are major determinant of the total financial requirements identified in the DoD billing statements for all open LOAs.

B. DoD Billing Statements. Billings for financial requirements shall be initiated by using the DD Form 645, or the special billing statement approved by the DSCA. These bills shall, as a minimum, identify the financial requirements, amount paid, and amount due.

C. Interest. The rate of interest to be charged, as well as the conditions governing the application of the rate, are promulgated in subparagraph 070104.B.5 of this volume. The rate, determined by the Department of the Treasury, shall be computed from the date of net arrearage. Except for special billing arrangements, the net arrearage computations begin with the quarterly FMS billing due dates (March 15, June 15, September 15 and/or December 15) as applicable.

050203. Policy for FMS Indebtedness and Arrearage

A. An FMS debt is money owed by a foreign purchaser to the Department that is requested by a DoD billing statement for goods and services sold under FMS procedures. When the amount due per the DoD billing statement is not paid by the due date, that amount is considered a late payment. Late payments, however, do not necessarily constitute an arrearage.

1. Pursuant to section 22(a) of the AECA, an arrearage occurs when the FMS purchaser's total cash resources on deposit with the United States Government are insufficient to cover all of its outstanding unliquidated dependable undertakings, when collectively considered. In FMS accounting, a country-level arrearage occurs on a net cash basis wherein total unpaid accrued expenditures exceed total available cash resources. Therefore, interest applies when the country-level unpaid accrued expenditures exceed the cash resources made available to the Department for payment on FMS contracts. Therefore, no interest shall be charged when a country's total unencumbered cash resources are greater than zero, unless otherwise determined by the DSCA. Refer to Table 5-1 for further information, and to Table 5-2 for an illustration.

2. For FMS sales subject to section 21(d) of the AECA with terms of "Payment on Delivery," the billings may be dated and issued upon delivery of the defense article or performance of the defense service. Interest shall be charged on any net amount due and payable for any individual FMS case that is not paid within 60 days after the due date specified in the DoD billing statement. For FMS sales subject to section 21(d) of the AECA, which allows payment 120 days after delivery, a determination by the President shall be sent to the Congress, together with a special emergency request for the authorization and appropriation of additional funds to finance those purchases made available under the AECA.

B. When funds made available to the Department by an FMS purchaser to meet collective cash requirements are insufficient, the DSCA shall initiate, through the cognizant DoD Component, appropriate action to identify the specific issue and remedy, e.g. adjustment to ordered values, delivery timeframes, ordered quantity, collection of additional funds or alternative financial arrangements that will balance current cash requirements with available funds.

C. Cash for FMS purchases is required to be deposited with the Department in advance of performance for FMS customers unless a written determination to the contrary has been made pursuant to the pertinent statutory authority. Therefore, within the FMS program, an arrearage should be an exceptional event. If an arrearage does occur, it does so on a net country basis--considering all sources of funding--as indicated in subparagraph 050203.A, above.

TABLE 5-1 – ANALYZING THE STATUS OF COUNTRY DEPOSITS

Conditions	Cash Position (All Sources)	Billing Due ⁵ Payment Status	Accrued Expenditures	Debt	Late Payment	Arrearage	Interest
1 ¹	6 months or more cash available	Billed per schedule; unpaid after due date	Less than cash available from all sources	YES	YES	NO	NO
2 ²	Less than 6 months cash available	Billed per schedule; paid on due date	Less than cash available from all sources	NO	NO	NO	NO
3 ³	Less than 6 months cash available	Billed per schedule; unpaid after due date	Less than cash available from all sources	YES	YES	NO	NO
4 ⁴	Less than 6 months cash available	Billed per schedule; unpaid after due date	More than cash available from all sources	YES	YES	YES	YES

¹ Country-level follow-up is required – delinquent accounts receivable with six-months of available cash.

² No country-level follow-up is required – no current accounts receivable.

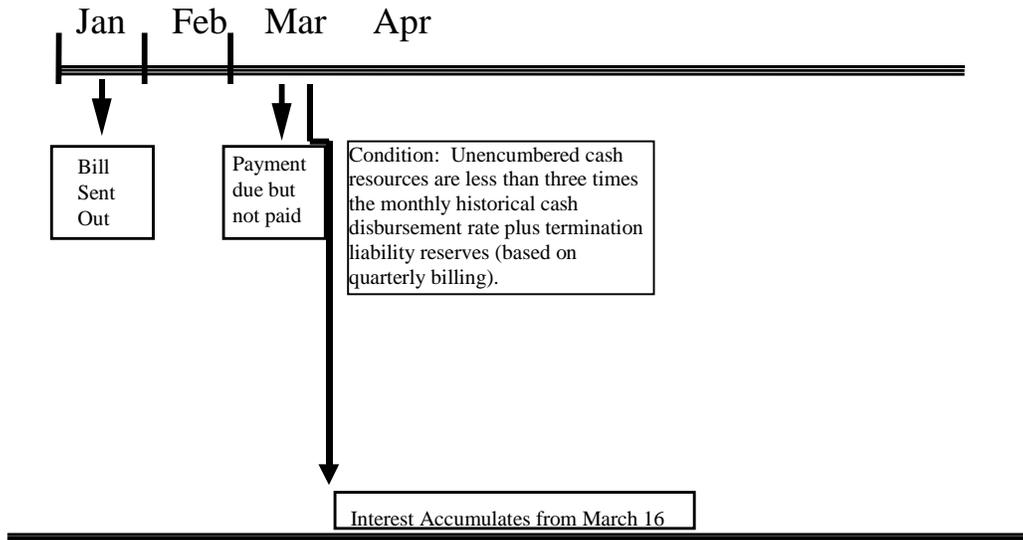
³ Country-level follow-up is required – delinquent accounts receivable.

⁴ Country-level follow-up is required. This accounts receivable will be aged. Termination liability is a component of debt but not arrearage.

⁵ Schedule reflects either DD Form 645 or Special Billing Arrangement (as applicable).

Table 5-2

**★ILLUSTRATION OF THE APPLICABILITY OF INTEREST
(PERTAINS TO SUBPARAGRAPH 050203.A.1 ONLY)**



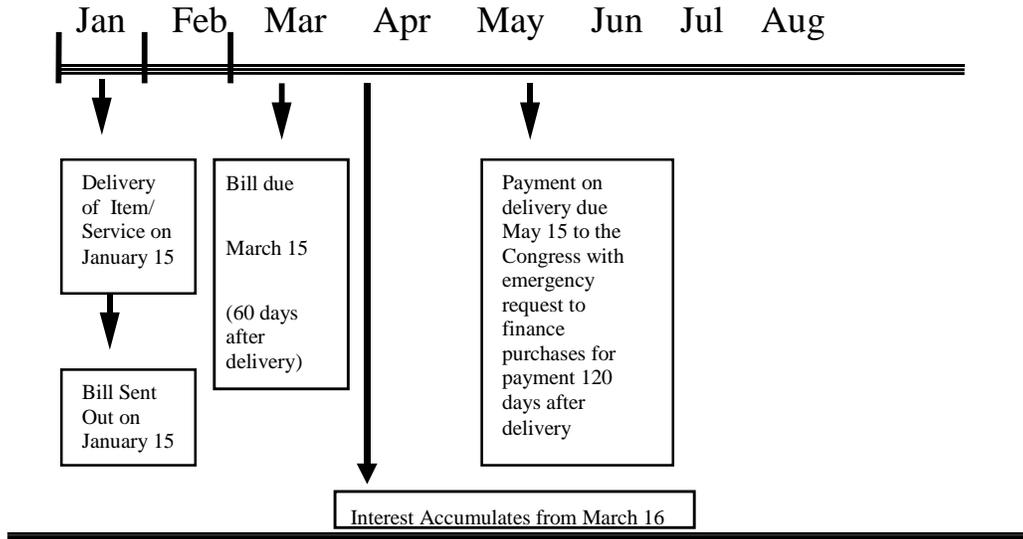
Example of Average Arrearage Calculation

Accrued Costs	=	\$30,000	Average Arrearage =	
Cash		<u>10,000</u>	<u>45 days</u>	X \$20,000 = \$10,000
Arrearage		\$20,000	90 days	

NOTE: Refer to Tables 8-33 and 8-34 of this volume, respectively, for delivery transactions pertaining to recoupment of interest penalties and interest on arrearages.

Table 5-3

**★ILLUSTRATION OF THE APPLICABILITY OF INTEREST
(PERTAINS TO SUBPARAGRAPH 050203.A.2 ONLY)**



NOTE: Refer to Tables 8-33 and 8-34 of this volume, respectively, for delivery transactions pertaining to recoupment of interest penalties and interest on arrearages.