

VOLUME 15, CHAPTER 5: “FOREIGN MILITARY SALES ARREARAGES AND INDEBTEDNESS”

SUMMARY OF MAJOR CHANGES

All changes are denoted by **blue font**.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue, and underlined font**.

The previous version dated January 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated references and hyperlinks.	Update
All	Changed Defense Finance and Accounting Service Security Assistance Accounting (DFAS SAA) to Defense Finance and Accounting Service Security Cooperation Accounting (DFAS SCA).	Update
050102.C	Clarified the periodic time frames DFAS SCA submits reports to Defense Security Cooperation Agency.	Update

Table of Contents

VOLUME 15, CHAPTER 5: “FOREIGN MILITARY SALES ARREARAGES AND INDEBTEDNESS” 1

0501 INTRODUCTION..... 3

 050101. Objective 3

 *050102. Responsibilities 3

0502 REQUIREMENTS 4

 050201. Legal Requirements..... 4

 050202. Policy Requirements 4

TABLE 5-1: ILLUSTRATION OF THE APPLICABILITY OF INTEREST (PERTAINS TO AECA SECTION 21(d) ONLY) 6

CHAPTER 5

FOREIGN MILITARY SALES ARREARAGES AND INDEBTEDNESS

0501 INTRODUCTION

050101. Objective

This chapter contains guidance for identifying Foreign Military Sales (FMS) arrearages and indebtedness, and for applying interest charges for the arrearages. Policy and procedures for collecting and reporting FMS arrearages and indebtedness are contained in Volume 6A, Chapter 12. For preparing and updating payment schedules see Chapter 4, and for preparing FMS billing statements see Chapter 8.

*050102. Responsibilities

A. The Defense Security Cooperation Agency (DSCA) is the principal Department of Defense (DoD) Component responsible for matters concerning FMS arrearages and indebtedness. For purchasers who have delinquent payments due, or who have accrued costs that exceed available cash, DSCA will evaluate the purchaser's entire program to determine whether or not a letter to the purchaser requesting payment is justified. If required, written notification to the purchaser will be sent within 30 days of the end of the preceding quarter. If no response is received, additional written follow-up will be made at succeeding 30-day intervals. For non-FMS foreign indebtedness requirements, refer to Volume 6A, Chapter 12. DSCA is also responsible for approving FMS feeder arrearage reports prepared by the Defense Finance and Accounting Service, Security Cooperation Accounting (DFAS SCA) Division. Those FMS reports are incorporated into a single consolidated DoD arrearage report that is submitted to the United States (US) Treasury Department. When insufficient funds are available for DoD to meet the collective cash requirements for an FMS purchaser, DSCA is responsible for working with the purchaser, the responsible DoD Component, and DFAS SCA 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.

B. The 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 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 DoD 5105.38-M, [Security Assistance Management Manual](#), subparagraph C9.9.3.

*C. DFAS SCA shall utilize updated payment schedules and other financial performance criteria to bill foreign governments and international organizations on the quarterly "FMS Billing Statement" (Department of Defense (DD) Form 645) and/or special billing state-

ments approved by DSCA. DFAS SCA will provide [quarterly](#) reports to DSCA which identify those purchasers who are delinquent in payment from the previous quarter, and [daily reports](#) which identify purchasers' average disbursement rates and estimated number of months of cash on hand.

0502 REQUIREMENTS

050201. Legal Requirements

A. For sales from stock, Arms Export Control Act ([AECA](#)), Section 21(b), codified as Title 22, United States Code, [section 2751, et. seq.](#) requires DoD to collect payments from foreign purchasers in advance or, if the President determines it to be in the national interest, upon delivery of a defense article or the rendering of a defense service. 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 AECA, Section 21(d), [22 U.S.C 2761\(d\)](#), on any net amount due and payable which is not paid within 60 days after the date of such billing. The President may extend the period to 120 days if he determines that emergency requirements of the purchaser exceed the ready availability of purchaser funds to the U.S. Government (USG) within the 60 days. In this case, the President submits a determination with a special emergency request for authorization and appropriation of additional funds to finance such purchases under the AECA.

B. For sales from procurements (items sent directly from the source, not from DoD inventories), when the country is authorized a dependable undertaking, AECA, Section 22(a), [22 U.S.C. 2762\(a\)](#), requires DoD 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. AECA, Section 22(a) 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 requires payment schedules approved by the DoD Components to include an amount to cover three months of anticipated expenses (including prepaid termination liability) and three months of work in process. The payment schedules, which formally are incorporated into letter of offer and acceptance (LOA) documents, are major determinants of the total financial requirements identified in the DoD billing statements for all open LOA documents.

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

C. FMS Arrearage

1. For FMS cases authorized to include a term of sale of “Payment on Delivery,” the billings may be dated and issued upon delivery of the defense article or performance of the defense service. An arrearage occurs when the billed amount is not received by the payment due date (60 days from the date of the bill or 120 days if authorized by the President).

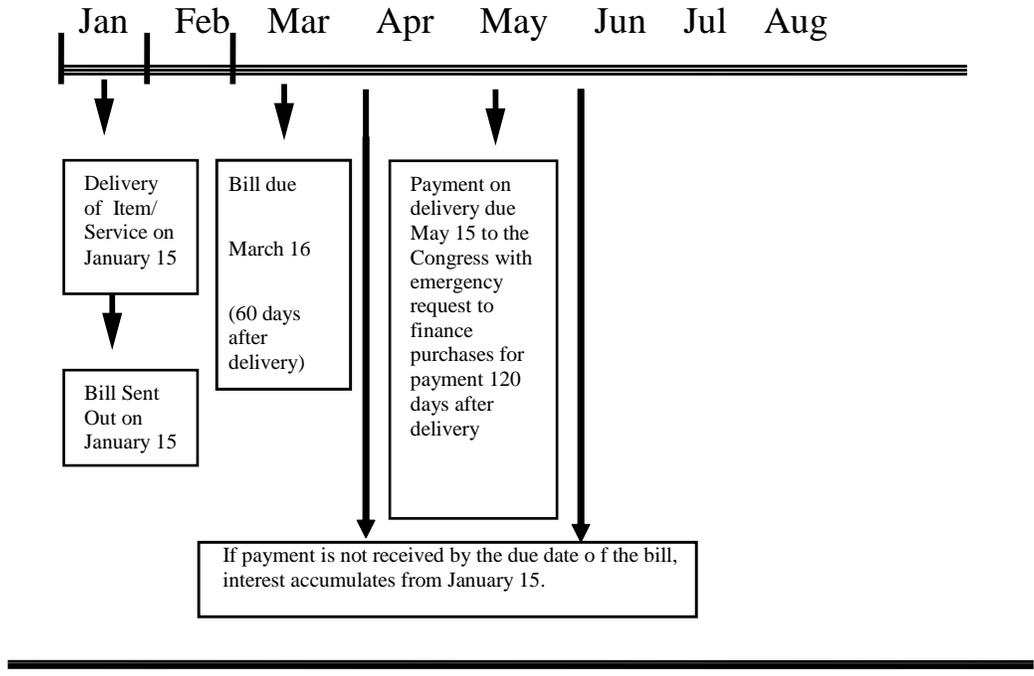
2. For FMS purchasers authorized “Dependable Undertaking” terms of sale, an arrearage occurs when the FMS purchaser’s total cash resources on deposit with the USG are insufficient to cover all its outstanding unliquidated dependable undertakings, considered collectively.

D. Interest. The rate of interest to be charged on FMS arrearages shall be at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the net arrearage. For the delinquent payments due on Foreign Military Sales interest rate, see http://www.treasurydirect.gov/govt/rates/tcir/tcir_index_opdirmnt.htm; once there, select the applicable month and “Table 5- Department of Defense Arms Export Control.”

1. Interest assessed on arrearages resulting from FMS cases with a term of sale of “Payment on Delivery,” is computed from the date of the billing. Refer to Table 5-1 for further information.

2. Interest assessed on arrearages resulting from purchaser’s total cash resources on deposit being insufficient to cover its outstanding unliquidated dependable undertakings is computed from the date on which the net arrearage occurs. Net Arrearage is the date that DFAS SCA determines that the accrued costs exceed available cash.

TABLE 5-1: ILLUSTRATION OF THE APPLICABILITY OF INTEREST (PERTAINS TO AECA SECTION 21(d) ONLY)



Refer to Table 8-24 of this volume for delivery transactions pertaining to recoupment of interest penalties and interest on arrearages.