

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	<p>“Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C § 1001 and 42 U.S.C § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.”</p>
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DEPARTMENT OF DEFENSE

48 CFR Parts 231 and 242

Defense Federal Acquisition Regulation Supplement; Restructuring Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule which amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) concerning the reimbursement of restructuring costs associated with business combinations.

DATES: *Effective date:* December 29, 1994.

Comment date: Comments on the interim rule should be submitted in writing at the address shown below on or before March 6, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric R. Mens, PDUSD(A&T)DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 94-D316 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Eric R. Mens, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) restricts the Department of Defense from reimbursing restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met. This interim DFARS rule provides policies and procedures for allowing appropriate contractor costs which involve external restructuring activities. A proposed DFARS rule addressing the allowability of contractor costs associated with internal restructuring activities will be published separately.

B. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment because section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) requires the Secretary of Defense to prescribe regulations no later than January 1, 1995. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected 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 most small entities are not subject to the contract cost principles in FAR part 31 or DFARS part 231. The contract cost principles normally apply where contract award exceeds \$500,000 and the price is based on certified cost

or pricing data. This interim DFARS rule applies only to defense contractors which incur restructuring costs coincident to a business combination and are subject to the contract cost principles. Most contracts awarded to small entities are awarded on a competitive, fixed-price basis. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small business entities and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94-D316 in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the interim rule does not impose any additional reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 231 and 242

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 231 and 242 are amended as follows:

1. The authority citation for 48 CFR parts 231 and 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205 is amended by adding a new subsection 231.205-70 to read as follows:

231.205-70 Restructuring costs.

(a) *Scope.* This subsection prescribes policies and procedures for allowing appropriate contractor restructuring costs when allowing such costs would result in net savings for DoD. This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337).

(b) *Definitions.* As used in this subsection:

(1) *Business combination* means a transaction whereby assets or operations of two previously separate companies are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) *External restructuring activities* means restructuring activities occurring after a business combination that involve facilities or workforce from both of the previously separate companies.

(3) *Internal restructuring activities* means restructuring activities occurring after a business combination that involve facilities or workforce from only one of the previously separate companies, or, when there has been no business combination, restructuring activities undertaken within one company.

(4) *Restructuring activities* means nonroutine, nonrecurring, or extraordinary activities associated with the reduction of facilities or workforce, or consolidation of facilities or operations (including disposal or abandonment undertaken to effect such consolidation), in an effort to improve future operations and reduce overall costs. Restructuring activities do not include routine or ongoing repositioning and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement or employee relocation).

(5) *Restructuring costs* means the costs, including both direct and indirect, associated with restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment.

(6) *Restructuring savings* means cost reductions, including both direct and indirect cost reductions, that are directly associated with or result directly from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* (1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR part 31 and DFARS part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, determines that overall reduced costs should result for DoD, and negotiates an advance agreement in accordance with 231.205 (d)(8); and

(iv) A certification is made by the Under Secretary of Defense (Acquisition & Technology), his Principal Deputy or designee (in all cases, an individual appointed by the President and confirmed by the Senate), that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD.

(2) The certification required by 231.205-70(c)(1)(iv) shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

(3) Costs that may be incurred after a business combination but are not allowed in accordance with FAR part 31 and DFARS part 231 include, but are not limited to:

(i) Incorporation fees; costs of attorneys, accountants, brokers, promoters, organizers, management consultants, and investment counselors (see FAR 31.205-27).

(ii) The cost of any change in the contractor's financial structure (see FAR 31.205-27).

(iii) Interest or other costs of borrowing to finance the acquisition or merger (however represented) (see FAR 31.205-20).

(iv) When the purchase method of accounting for a business combination is used, increased depreciation, amortization, or cost of money attributable to increases in the book value of plant, equipment, and other tangible assets of the acquired company above the amount that would have been allowed if the business combination had not taken place (see FAR 31.205-52).

(v) Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) (see FAR 31.205-49).

(vi) Payments to employees of special compensation in excess of the

contractor's normal severance pay practice if their employment terminates following a change in the management control over, or ownership of, the company or a substantial portion of its assets (see FAR 31.205-6(l)(1)).

(vii) Payments to employees of special compensation which is contingent upon the employee remaining with the contractor for a specified period of time following a change in the management control over, or ownership of, the company or a substantial portion of its assets (see FAR 31.205-6(l)(2)).

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs associated with external restructuring activities, the cognizant ACO shall:

(1) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification in (c)(1)(iv) is obtained.

(2) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a detailed breakout by year by cost element, showing the projected restructuring costs, both direct and indirect, and projected restructuring savings, both direct and indirect.

(3) Negotiate a Memorandum of Understanding with the contractor setting forth, at a minimum, the types and treatments of restructuring costs and the methodology to be used to demonstrate reduced costs to DoD.

(4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.

(5) Upon receipt of the contractor's proposal, immediately adjust forward pricing rates to reflect the impact of projected restructuring savings. Pending execution of an advance agreement in accordance with 231.205-70(d)(8), restructuring costs may be included in forward pricing rates if a repricing clause is included in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification required by 231.205-70(c)(1)(iv) is not obtained.

(6) Upon receipt of the contractor's proposal, immediately request an audit review of the contractor's proposal.

(7) Upon receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis.

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, cost ceiling amounts on restructuring projects and, when necessary, a cost amortization schedule. Cost ceilings may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification required by 231.205-70(c)(1)(iv) is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), ATTN: OUSD(A&T)DP/CPF, a recommendation for certification of net benefit. Include the information described in 231.205-70(e).

(e) *Information needed to obtain certification of net benefit.* (1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for certification. This recommendation must clearly indicate that contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

SUBPART 242.12—NOVATION AND CHANGE-OF-NAME AGREEMENTS

3. Sections 242.1202 and 242.1204 are added to read as follows:

242.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall ensure agreements are executed promptly.

242.1204 Agreement to recognize a successor in interest (novation agreement).

(e) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 231.205-70, the cognizant contracting officer shall include the following provision as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(e):

“(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or

Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under part 31 of the Federal Acquisition Regulation (FAR) or part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibly-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) and/or the National Aeronautics and Space Administration (NASA), and the requirements included in DFARS 231.205-70 are met. These costs and the contracting parties' responsibilities shall be addressed in a Memorandum of Understanding to be negotiated between the cognizant contracting officer and the Transferee. The Memorandum of Understanding will specify the types and treatment of restructuring costs and the methodology to be used to demonstrate reduced costs to DoD and/or NASA. Restructuring costs shall not be allowed on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth cost ceiling amounts on restructuring projects and the period to which such costs shall be assigned.”

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket 93-40; Notice 3]

RIN 2127-AE88

Temporary Exemption From Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical correction; final rule.

SUMMARY: This notice corrects a grammatical error in the language of the certification label required for a vehicle temporarily exempted from compliance with the Federal motor vehicle safety standards.

DATES: The effective date of the final rule is February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: On October 29, 1993, NHTSA amended 49 CFR 555.9(c)(1), the certification requirements for motor vehicles that have been temporarily exempted from

compliance with one or more of the Federal motor vehicle safety standards, to conform it to the requirements of 49 CFR 567.4(g)(5) for nonexempted vehicles by including a reference to the Theft Prevention Standard (58 FR 58103).

As amended, the manufacturer of an exempted vehicle, under paragraph 555.9(c)(1), shall:

(c) Meet all applicable requirements of Part 567 of this chapter, except that—

(1) Instead of the statement required by Sec. 567.4(g)(5) of this chapter, the following statement shall appear:

“THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY AND THEFT PREVENTION STANDARDS (and, if a passenger car), BUMPER STANDARD IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE EXCEPT FOR STANDARDS NOS. (listing the standards by number and title for which an exemption has been granted) EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____.”

Michael Grossman, representing Automobili Lamborghini, telephoned NHTSA to comment that this wording would require an exempted manufacturer of a passenger car to certify in part to “* * * THEFT PREVENTION STANDARDS, BUMPER STANDARD. * * *” He recommended that NHTSA correct this grammatical error by incorporating the language of the general certification requirement at Sec. 567.4(g)(5) with the exception now in effect under which the exempted standards are listed. NHTSA concurs with this comment, and is amending paragraph 555.9(c)(1) in an appropriate manner. A manufacturer of an exempted vehicle shall now:

(c) Meet all applicable requirements of Part 567 of this chapter, except that—

(1) The statement required by paragraph 567.4(g)(5) of this chapter shall end with the phrase “except for Standards Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____.”

This amendment also addresses a recent observation by Chrysler Corporation that vehicles other than passenger cars, such as its electric vans which are covered by a Temporary Exemption, are not yet subject to 49 CFR Part 541 *Federal Motor Vehicle Theft Prevention Standard*, and its recommendation that the parenthetical reference to passenger cars should precede and not follow the reference to the theft prevention standard in paragraph 555.9.