

48 CFR Part 231

[DFARS Case 96-D332]

Defense Federal Acquisition Regulation Supplement; Restructuring Costs/Bonuses**AGENCY:** Department of Defense (DoD).**ACTION:** Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to prohibit use of fiscal year 1997 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid to the employee, when such payment is part of restructuring costs associated with a business combination.

DATES: Effective date: November 15, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before January 14, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberin, PDUDA (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 96-D332 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberin, (703) 602-0131.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule amends paragraph (f)(1) of DFARS 231.205-6, Compensation for personal services, to implement Section 8095 of the Fiscal Year 1997 Defense Appropriations Act (Pub. L. 104-208). Section 8095 prohibits DoD from using fiscal year 1997 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid by the contractor to the employee, when such payment is part of restructuring costs associated with a business combination.

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. This rule implements Section 8095 of the Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208), which was effective upon enactment on September 30, 1996. 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 contracts awarded to small entities use the simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.
Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 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 231.205-6 is amended by revising paragraph (f)(1) to read as follows:

§ 231.205-6 Compensation for personal services.

* * * * *

(f)(1) Costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 appropriations (Section 8122 of Pub. L. 104-61) or fiscal year 1997 appropriations (Section 8095 of Pub. L. 104-208). This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205-70(b) for the definitions of

“business combination” and “restructuring costs.”)

[FR Doc. 96-29330 Filed 11-14-96; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****49 CFR Parts 1104, 1111, 1112, 1115 and 1121**

[STB Ex Parte No. 527]

Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings**AGENCY:** Surface Transportation Board.**ACTION:** Final rule.

SUMMARY: The Surface Transportation Board (Board) amended its Rules of Practice at 49 CFR 1100-1149 in a decision served October 1, 1996 and published in the Federal Register on October 8, 1996 (61 FR 52710). The rules were scheduled to become effective November 7, 1996, but their effectiveness was postponed until November 16, 1996 in a decision served and published on November 6, 1996 (61 FR 57339). Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board, filed a petition to stay a portion of the decision and a petition to reopen. The National Industrial Traffic League also filed a petition for reopening and reconsideration. In response to these petitions, the Board is modifying some of the final rules published in the Federal Register on October 8, 1996. In addition, certain other minor technical changes are being made.

EFFECTIVE DATE: November 16, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 927-7312. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The Board's decision adopting these regulations is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289-4357. The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. These rules clarify previously announced policy and make participation in proceedings less burdensome.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Parts 1104, 1112 and 1115

Administrative practice and procedure.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1121

Administrative practice and procedure, Rail exemption procedures, Railroads.

Decided: November 8, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen. Commissioner Owen commented with a separate expression.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1104, 1111, 1112, 1115 and 1121 of the Code of Federal Regulations are amended as follows:

PART 1104—FILING WITH THE BOARD—COPIES—VERIFICATIONS—SERVICE—PLEADINGS, GENERALLY

1. The authority citation for part 1104 continues to read as follows:

Authority: 5 U.S.C. 559; 21 U.S.C. 853a; 49 U.S.C. 721.

2. Section 1104.3 is amended by revising paragraph (a)(2) to read as follows:

§ 1104.3 Copies.

(a) * * *

(1) * * *

(2) All electronic spreadsheets should be submitted on 3.5 inch, IBM compatible formatted diskettes or QIC-80 tapes. Textual materials must be in WordPerfect 5.1 format, and electronic spreadsheets must be in LOTUS 1-2-3 release 5 or earlier format. One copy of each such computer diskette or tape submitted to the Board should, if possible, be provided to any other party requesting a copy.

* * * * *

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

3. The authority citation for part 1111 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

§ 1111.3 [Amended]

4. Section 1111.3, 6th sentence, is amended by removing the words "Ten copies of the complaint" and adding in their place the words "An original and ten copies of the complaint".

PART 1112—MODIFIED PROCEDURES

5. The authority citation for part 1112 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

6. Section 1112.2 is amended by adding the following two sentences to the end of the paragraph to read as follows:

§ 1112.2 Decisions directing modified procedure.

* * * The filing of motions or other pleadings will not automatically stay or delay the established procedural schedule. Parties will adhere to this schedule unless the Board issues an order modifying the schedule.

PART 1115—APPELLATE PROCEDURES

7. The authority citation for part 1115 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

8. Section 1115.3 is amended by revising paragraph (a) to read as follows:

§ 1115.3 Board actions other than initial decisions.

(a) A discretionary appeal of an entire Board action is permitted. Such an appeal should be designated a "petition for reconsideration."

* * * * *

9. Section 1115.9 is amended by revising paragraph (b) to read as follows:

§ 1115.9 Interlocutory appeals.

* * * * *

(b) In stand-alone cost complaints, any interlocutory appeal of a ruling shall be filed with the Board within three (3) business days of the ruling. Replies to any interlocutory appeal shall be filed with the Board within three (3) business days after the filing of any such appeal. In all other cases, interlocutory appeals shall be filed with the Board within seven (7) calendar days of the ruling and replies to interlocutory appeals shall be filed with Board within seven (7) calendar days after the filing of any such appeal as computed under 49 CFR 1104.7.

PART 1121—RAIL EXEMPTION PROCEDURES

10. The authority citation for part 1121 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10502 and 10704.

§ 1121.4 [Amended]

11. Section 1121.4(e), second sentence, is amended by adding the

words "petitions for reconsideration or" prior to the words "petitions to reopen".

[FR Doc. 96-29379 Filed 11-14-96; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 960129019-6019-01; I.D. 110896C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1996 bycatch allowance of Pacific halibut apportioned to the trawl Pacific cod fishery in the BSAI.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), November 8, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1996 bycatch allowance of Pacific halibut for the BSAI trawl Pacific cod fishery category, which is defined at § 679.21(e)(3)(iv)(E), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 1,685 metric tons.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.21(e)(7)(iv), that the 1996 bycatch allowance of Pacific halibut apportioned to the trawl Pacific cod fishery in the BSAI has been caught.