

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) OMB determines is "economically significant" as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These regulatory revisions are not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. These rule

revisions impose no enforceable duties on these entities. Rather, these rule revisions reduce burdens associated with certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule changes do not create a mandate on State, local or tribal governments. The rule changes do not impose any enforceable duties on these entities. Rather, the rule changes reduce burden for certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 12, 1999.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, 40 CFR Part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 63.51, the definition of "Section 112(j) deadline" is revised to read as follows:

§ 63.51 Definitions.

* * * * *

Section 112(j) deadline means the date 18 months after the date by which a relevant standard is scheduled to be promulgated under this part, except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the Section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the Section 112(j) deadline is December 15, 1999.

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[FR Doc. 99-9571 Filed 4-15-99; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 98-D019]

Defense Federal Acquisition Regulation Supplement; Restructuring Savings Repricing Clause

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that contracting officers should consider using a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and

the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

EFFECTIVE DATE: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 98-D019.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 231.205-70, External restructuring costs, to specify that contracting officers should consider including a downward-only repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

Since the late 1980's, defense contractors have been restructuring their business operations to increase efficiencies and become more competitive in the defense marketplace. Many of the restructuring activities result from business combinations (such as mergers or acquisitions) and often lead to reduced overall costs and future savings. The repricing clause should ensure that DoD receives its appropriate share of restructuring savings.

A proposed DFARS rule was published in the **Federal Register** on November 30, 1998 (63 FR 65727). Nine sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 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.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget 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 231.205-70 is amended by adding paragraph (f) to read as follows:

§ 231.205-70 External restructuring costs.

* * * * *

(f) *Contracting officer responsibilities.*

(1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period;

(iv) Whether the contracting parties are able to make a reasonable estimate of the impact of restructuring on the contract; and

(v) The size of the potential dollar impact of restructuring on the contract.

(3) If the contracting officer decides to use a repricing clause, the clause must provide for a downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring net savings.

[FR Doc. 99-9559 Filed 4-15-99; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 98-D012]

Defense Federal Acquisition Regulation Supplement; Electronic Funds Transfer

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove policy and procedures for use of the electronic funds transfer (EFT) method of contract payment when the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information. The DFARS policy and procedures are no longer necessary, as a result of changes made to the Federal Acquisition Regulation (FAR) in Item IV of Federal Acquisition Circular 97-11.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0131; telefax (703) 602-0350. Please cite DFARS Case 98-D012.

SUPPLEMENTARY INFORMATION:

A. Background

An interim DFARS rule was published in the **Federal Register** on May 20, 1998 (63 FR 27682). The rule prescribed use of a new clause at DFARS 252.232-7009, Payment by Electronic Funds Transfer (CCR). This clause was especially tailored for DoD contractors that are paid by EFT and registered in the CCR database as required by DFARS Subpart 204.73. No public comments were received in response to the interim DFARS rule.

Subsequently, on March 4, 1999, a final FAR rule was published in the **Federal Register** (64 FR 10538). The rule amends the FAR, effective May 3, 1999, to provide policy and procedures for making contract financing and delivery payments to contractors by EFT. To accommodate the DoD requirement for contractors to register into a CCR database, the rule prescribes a new clause at FAR 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, for use when the payment office will make payment by EFT and will use the CCR database as its source of EFT information. The clause at FAR 52.232-33 is equivalent to the clause at DFARS 252.232-7009.

This final rule eliminates the DFARS changes made in the interim rule published on May 20, 1998, as a result of the FAR changes pertaining to payment by EFT published on March 4, 1999.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory