

section 338E of the Act shall be made within one year of the date the participant breached his or her Loan Repayment Program Contract, unless the NIH specifically authorizes a longer period. Terminations will not be considered a breach of contract in cases where such terminations are beyond the control of the participant as follows:

(a) Terminations for convenience of the Government will not be considered a breach of contract and monetary damages will not be assessed.

(b) Occasionally, a participant's research assignment or funding may evolve and change to the extent that the individual is no longer engaged in approved research. Similarly, the research needs and priorities of the IC and/or the NIH may change to the extent that a determination is made that a health professional's skills may be better utilized in a nonresearch assignment. Normally, job changes of this nature will not be considered a breach of contract on the part of either the NIH or the participant. Under these circumstances, the following will apply:

(1) Program participation will cease as of the date an individual is no longer engaged in approved research;

(2) Based on the approval of the NIH, the participant will be released from the remainder of his or her service obligation without assessment of damages or monetary penalties. The participant in this case will be permitted to retain all Program benefits made or owed by the NIH on his/her behalf up to the date the individual is no longer engaged in research, less the pro rata portion of any benefits advanced beyond the period of completed service.

§ 68.14 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?

(a) Any obligation of a participant for service or payment will be canceled upon the death of the participant.

(b) The NIH may waive or suspend any service or payment obligation incurred by the participant upon request whenever compliance by the participant: (1) Is impossible, (2) would involve extreme hardship to the participant, or (3) if enforcement of the service or payment obligation would be unconscionable. The NIH may approve a request for a suspension of the service or payment obligations for a period of up to one (1) year.

(c) Compliance by a participant with a service or payment obligation will be considered impossible if the NIH determines, on the basis of information and documentation as may be required, that the participant suffers from a

permanent physical or mental disability resulting in the inability of the participant to perform the service or other activities that would be necessary to comply with the obligation.

(d) In determining whether to waive or suspend any or all of the service or payment obligations of a participant as imposing an undue hardship and being against good conscience, the NIH, on the basis of such information and documentation as may be required, will consider: (1) The participant's present financial resources and obligations; (2) the participant's estimated future financial resources and obligations; and (3) the extent to which the participant has problems of a personal nature, such as a physical or mental disability or terminal illness in the immediate family, which so intrude on the participant's present and future ability to perform as to raise a presumption that the individual will be unable to perform the obligation incurred.

§ 68.15 When can an NIH LRP payment obligation be discharged in bankruptcy?

Any payment obligation incurred under § 68.13 may be discharged in bankruptcy under Title 11 of the United States Code only if such discharge is granted after the expiration of the seven-year period beginning on the first date that payment is required and only if the bankruptcy court finds that a nondischarge of the obligation would be unconscionable.

§ 68.16 Additional conditions.

(a) When a shortage of funds exists, participants may be funded only partially, as determined by the NIH. However, once an NIH LRP contract has been signed by both parties, the NIH will obligate such funds as necessary to ensure that sufficient funds will be available to pay benefits for the duration of the period of obligated service unless, by mutual written agreement, the parties specify otherwise.

(b) Additional conditions may be imposed as deemed necessary.

§ 68.17 What other regulations and statutes apply?

Several other regulations and statutes apply to this part. These include, but are not necessarily limited to:

Debt Collection Act of 1982 (31 U.S.C. 3701 note);

Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 176); and Privacy Act of 1974 (5 U.S.C. 552a).

Dated: September 28, 2011.

Francis S. Collins,

Director, NIH, National Institutes of Health.

Approved: February 7, 2012.

Kathleen Sebelius,

Secretary.

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 31 and 52

[FAR Case 2011-011; Docket 2011-0011; Sequence 1]

RIN 9000-AM13

**Federal Acquisition Regulation;
Unallowability of Costs Associated
With Foreign Contractor Excise Tax**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the requirements of the James Zadroga 9/11 Health and Compensation Act of 2010 regarding the imposition of a 2 percent tax on certain foreign procurements.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before April 23, 2012 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2011-011 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2011-011" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2011-011." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2011-011" on your attached document.

- *Fax:* (202) 501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), Attn: Hada Flowers, 1275 First

Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2011–011, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2011–011.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement a policy that imposes on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount of such specified Federal procurement payment. Additionally, the law stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed (26 U.S.C. 5000C Note).

The James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347) was signed into law and effective on January 2, 2011. Section 301 of the law amends the Internal Revenue Code of 1986 by adding a new Section 5000C, Imposition of tax on certain foreign procurements (26 U.S.C. 5000C). This new section imposes on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount of such specified Federal procurement payment. Additionally, the law stipulates that no funds are to be disbursed to any foreign contractor in order to reimburse the tax imposed (26 U.S.C. 5000C Note).

II. Discussion and Analysis

To comply with the law, the FAR Council is proposing to amend FAR 31.205–41 to inform the Government and contractors that the costs of the 2 percent tax are not allowable, and at FAR 52.229–3, 52.229–4, 52.229–6 and 52.229–7, to provide that the costs for the 2 percent tax are not included in foreign fixed-price contracts and foreign fixed-price contracts with foreign governments. The law states that it “shall be applied in a manner consistent with international agreements.” The law states that the 2 percent excise tax is applied to foreign persons that receive Federal procurement payments pursuant to a contract with the

Government of the United States for the provision of goods, if such goods are manufactured or produced in a covered country, or for the provision of services if those services are provided in a covered country. “Covered country” means a country that is not a country that is party to an international procurement agreement with the United States. “Foreign person” means any person (including any individual, partnership, corporation, or other form of association) other than a United States person. The law applies to contracts entered into on or after January 2, 2011. The procedures for withholding this 2 percent tax are being handled in a separate FAR case.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may 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.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

At this time an estimate of the number of small entities to which this rule will apply is not available. The 2 percent excise tax is only applied to foreign persons that receive Federal procurement payments pursuant to a contract with the Government of the United States for the provision of goods, if such goods are manufactured or produced in a covered country, or for the provision of services if those services are provided in a covered country. “Foreign person” means any person (including any individual, partnership, corporation, or other form of association) other than a United States person. “Covered country” means a country that is not a country that is party to an international procurement agreement with the United States.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small

Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2011–011) in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: February 14, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

1. The authority citation for 48 CFR parts 31 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURE

2. Amend section 31.205–41 by adding paragraph (b)(8) to read as follows:

31.205–41 Taxes.

* * * * *

(b) * * *

(8) Any tax imposed under 26 U.S.C. 5000C.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.229–3 by revising the date of the clause and paragraph (b) to read as follows:

52.229–3 Federal, State, and Local Taxes.

* * * * *

Federal, State, and Local Taxes (date)

* * * * *

(b)(1) The contract price includes all applicable Federal, State, and local

taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C.

5000C may not be—

- (i) Included in the contract price; nor
- (ii) Reimbursed.

* * * * *

4. Amend section 52.229–4 by revising the date of the clause and paragraph (b) to read as follows:

52.229–4 Federal, State, and Local Taxes (State and Local Adjustments).

* * * * *

Federal, State, and Local Taxes (state and local adjustments) (Date)

* * * * *

(b)(1) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C.

5000C may not be—

- (i) Included in the contract price; nor
- (ii) Reimbursed.

* * * * *

5. Amend section 52.229–6 by:

(a) Revising the date of the clause;

(b) Redesignating paragraph (c) as (c)(1); removing from the newly designated paragraph (c)(1) “States,” and adding “States, except as provided in subparagraph (c)(2) of this clause.” in its place;

(c) Adding a new paragraph (c)(2);

(d) Redesignating paragraph (d) as (d)(1); removing from the newly designated paragraph (d)(1) “The contract price shall” and adding “Except as provided in subparagraph (d)(2) of this clause, the contract price shall” in its place; and

(e) Adding a new paragraph (d)(2).

The revised and newly added text reads as follows:

52.229–6 Taxes-Foreign Fixed-Price Contracts.

* * * * *

Taxes-Foreign Fixed-Price Contracts (Date)

* * * * *

(c)(1) * * *

(2) Taxes imposed under 26 U.S.C.

5000C may not be—

- (i) Included in the contract price; nor
- (ii) Reimbursed.

(d)(1) * * *

(2) The contract price may not be increased to offset taxes imposed under 26 U.S.C. 5000c.

* * * * *

6. Amend section 52.229–7 by:

a. Revising the date of the clause;

b. Redesignating paragraph (b) as

(b)(1); and

c. Adding a new paragraph (b)(2).

The revised and newly added text reads as follows:

52.229–7 Taxes-Foreign Fixed-Price Contract With Foreign Governments.

* * * * *

Taxes-Foreign Fixed-Price Contracts With Foreign Governments (Date)

* * * * *

(b) * * *

(2) Taxes imposed under 26 U.S.C.

5000c may not be included in the contract price.

* * * * *

[FR Doc. 2012–3905 Filed 2–21–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120208116–2115–01]

RIN 0648–BB83

Fisheries of the Northeastern United States; Proposed 2012–2013 Northeast Skate Complex Fishery Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes catch limits and associated measures for the Northeast Skate Complex Fishery for the 2012–2013 fishing years. The proposed action was developed by the New England Fishery Management Council pursuant to the provisions of the Northeast Skate Complex Fishery Management Plan. The proposed catch limits are supported by the best available scientific information and reflect recent increases in skate biomass.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on March 23, 2012.

ADDRESSES: An environmental assessment (EA) was prepared that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also

available online at <http://www.nefmc.org>.

You may submit comments, identified by NOAA–NMFS–2012–0015, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, and then enter “NOAA–NMFS–2012–0015” in the keyword search. Locate the document you wish to comment on from the resulting list, and click on the “Submit a Comment” icon on the right of that line.

- **Fax:** (978) 281–9135, Attn: Tobey Curtis.

- **Mail:** Daniel Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Skate Specifications.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) is responsible for developing management measures for skate fisheries in the northeastern U.S. through the Northeast Skate Complex Fishery Management Plan (Skate FMP). Seven skate species are managed under the Skate FMP: Winter, little, thorny, barndoor, smooth, clearnose, and rosette. The Council’s Scientific and Statistical Committee (SSC) reviews the best available information on the status of skate