

§ 4.06–5 Responsibility of individuals directly involved in serious marine incidents.

(a) Any individual engaged or employed on board a vessel who is determined to be directly involved in a SMI must provide blood, breath, saliva, or urine specimens for chemical testing required by § 4.06–20 when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide blood, breath, saliva, or urine specimens, this refusal must be noted on form CG–2692B and in the vessel's official log book, if one is required. The marine employer must remove the individual from duties that directly affect the safe operation of the vessel as soon as practicable.

(c) Individuals subject to alcohol testing after an SMI are prohibited from consuming alcohol beverages for eight (8) hours following the occurrence of the SMI, or until after the alcohol testing required by this part is completed.

(d) No individual may be compelled to provide specimens for alcohol and drug testing required by this part; however, refusal is a violation of regulations and may subject the individual's to suspension and revocation proceedings under part 5 of this chapter and/or a civil penalty.

§ 4.06–10 [Removed]

5. Remove § 4.06–10.

6. Add § 4.06–15 to read as follows:

§ 4.06–15 Availability of chemical testing devices.

(a) *Alcohol testing.* The marine employer must have sufficient devices capable of determining the presence of alcohol in an individual's system onboard the vessel for use to meet the alcohol testing requirements found under § 4.06–3 of this part.

(b) *Drug testing.* The marine employer must have urine specimen collection and shipping kits meeting the requirements of 49 CFR part 40 that are readily available for use following SMIs. The specimen collection and shipping kits need not be carried aboard each vessel if obtaining the kits and conducting the required drug tests can be completed within 32 hours from the time of the occurrence of the SMI.

7. Revise § 4.06–20 to read as follows:

§ 4.06–20 Specimen collection requirements.

(a) *Alcohol testing.* (1) When conducting alcohol testing required in § 4.06–3(a), an individual determined under this part to be directly involved in the SMI must provide a specimen of their breath, blood, or saliva to the

marine employer as required in this subpart.

(2) Collection of an individual's blood to comply with § 4.06–3(a) must be taken only by qualified medical personnel.

(3) Collection of an individual's saliva or breath to comply with § 4.06–3(a) must be taken only by personnel trained to operate the alcohol-testing device in use and must be conducted in accordance with this subpart.

(b) *Drug testing.* When conducting drug testing required in § 4.06–3(b), an individual determined under this part to be directly involved in the SMI must provide a specimen of their urine in accordance with 46 CFR part 16 and 49 CFR part 40.

8. Add § 4.06–70 to read as follows:

§ 4.06–70 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115.

Dated: February 24, 2003.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

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DEPARTMENT OF DEFENSE**48 CFR Parts 232 and 252**

[DFARS Case 2002–D017]

Defense Federal Acquisition Regulation Supplement; Payment Withholding

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials or labor-hour contract unless otherwise prescribed in the contract Schedule. The proposed rule would permit, but not require, the administrative contracting officer (ACO) to withhold payment amounts if the ACO determines the withholding to be necessary to protect the Government's interests.

DATES: DoD will consider all comments received by April 29, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS

Case 2002–D017 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D017.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:**A. Background**

Federal Acquisition Regulation (FAR) 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, requires the contracting officer to withhold 5 percent of the amounts due, up to a maximum of \$50,000, unless otherwise specified in the contract Schedule. The Government retains the withheld amount until the contractor executes and delivers, at the time of final payment, a release discharging the Government from all liabilities, obligations, and claims arising under the contract.

This rule proposes to add DFARS 232.111(b) and DFARS 252.232–7XXX, Alternate A, to specify that, normally, there should be no need to withhold payments when dealing with contractors that typically comply with contractual requirements in a timely manner. This is in contrast to the current requirement in time-and-materials and labor-hour contracts that contracting officers must withhold payments unless other direction is provided in the contract.

DoD is considering revising its policy because the current withholding provisions are administratively burdensome and may, in some situations, result in the withholding of amounts that exceed reasonable amounts needed to protect the Government's interests. In addition, the contractor is already incentivized to execute and deliver the release discharging the Government from all liabilities, obligations, and claims under the contract, since this release is a condition for final payment.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule 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 the rule applies only to time-and-materials and labor-hour contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D017.

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 Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 232 and 252 as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

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

PART 232—CONTRACT FINANCING

2. Section 232.111 is added to read as follows:

232.111 Contract clauses for non-commercial purchases.

(b) Use the clause at FAR 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, with 252.232-7XXX, Alternate A, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(i) Alternate A permits the administrative contracting officer (ACO) to withhold 5 percent of the amount due until a reserve is set aside in an amount the ACO considers to be necessary, but not to exceed \$50,000, to protect the Government's interests.

(ii) Normally, there should be no need to withhold payment for a contractor

with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims.

(iii) If the ACO determines that it is necessary to withhold payment to protect the Government's interests, the ACO shall issue written direction to the contractor to withhold 5 percent of amounts due until a sufficient reserve is set aside.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.232-7XXX is added to read as follows:

252.232-7XXX Alternate A.

Alternate A (XXX 2003)

As prescribed in 232.111(b), substitute the following paragraph (a)(2) for paragraph (a)(2) of the clause at FAR 52.232-7:

(a)(2) The Administrative Contracting Officer (ACO) may unilaterally issue written direction to the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the ACO considers necessary to protect the Government's interests. The ACO may withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 021903E]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the

activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would exempt one vessel from the minimum mesh size requirements for the Gulf of Maine (GOM) Regulated Mesh Area (RMA); regulations pertaining to the GOM Rolling Closure Areas II, III, IV, and V; days-at-sea (DAS) restrictions; and minimum fish size requirements. The experiment proposes to conduct a study to target cod and flounder using a modified trawl net constructed with a changeable inner mesh size codend surrounded by a small mesh codend cover to determine the selectivity of various square mesh sizes and mesh types. The EFP would allow these exemptions for one commercial vessel, for not more than 24 days of sea trials. All experimental work would be monitored at sea by a biologist from a contracted consulting group and supervised ashore and on board (during key trips) by the project coordinator for the Cooperative Research Partners Initiative-funded project.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before March 17, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Cooperative Research Partners Initiative Gloucester, MA Trawl Selection Study." Comments may also be sent via facsimile (fax) to (978) 281-9135.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fisheries Management Specialist, 978-281-9141.

SUPPLEMENTARY INFORMATION: A completed application for an EFP was submitted by Joseph B. Novello as part of a Cooperative Research Partners Initiative-funded project on January 13, 2003. The EFP would exempt one federally permitted commercial fishing vessel from the following NE