

Drafting Information

The principal author of these regulations is James C. O'Leary, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended in part, by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *, Section 301.6103(j)(1)–1 also issued under 26 U.S.C. 6103(j)(1); * * *.

Par. 2. In § 301.6103(j)(1)–1 paragraphs (b)(1), (b)(3), and (e) are revised to read as follows:

§ 301.6103(j)(1)–1 Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.
* * * * *

[The text of proposed paragraphs (b)(1), (b)(3) and (e) are the same as the text of § 301.6103(j)(1)–1T(b)(1), (b)(3), and (e) published elsewhere in this issue of the *Federal Register*.]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

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GENERAL SERVICES ADMINISTRATION**48 CFR Parts 546 and 552**

[GSAR ANPR 2005–N01]

General Services Administration Acquisition Regulation; Waiver of Consequential Damages and “Post Award” Audit Provisions.

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: The General Services Administration (GSA) is requesting

comments from both Government and industry on whether the General Services Administration Acquisition Regulation (GSAR) should be revised to include a waiver of consequential damages for contracts awarded for commercial item under the FAR. GSA is also requesting comments on whether “post award” audit provisions should be included in its Multiple Award Schedules (MAS) contracts and Governmentwide acquisition contracts (GWACs).

DATES: *Comment Date:* Comments are due on or before March 25, 2005.

ADDRESSES: Submit comments identified by GSAR ANPR 2005–N01 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.acqnet.gov/GSAM/gsamproposed.html>. Click on the GSAR ANPR number to submit comments.
- E-mail: gsaranpr.2005-N01@gsa.gov. Include GSAR ANPR 2005–N01 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR ANPR 2005–N01 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

Public Meeting: The meeting will be held on April 14, 2005, from 9 a.m. to 4:00 p.m. EST.

To facilitate discussions at the public meeting, interested parties are encouraged to provide, no later than March 25, 2005 written comments on issues they would like addressed at the meeting. There will be no record kept of this meeting, any comments to be made a part of the administrative record must be in writing and must be submitted to GSA at the address below within two weeks following the public meeting.

The meeting will be held at the General Services Administration, National Capital Region, 301 7th and D Street, SW, Washington, DC 20407, Auditorium. Participants are encouraged to check the Web site prior to the public meeting to ensure the location has not changed. Interested parties may register and submit electronic comments at <http://www.acqnet.gov/GSAM/gsamproposed.html>.

Special Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ernest Woodson, at 202–501–3775, at least 5 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Division, 202–501–3775.

SUPPLEMENTARY INFORMATION: Background

Currently, FAR Part 12, Acquisition of Commercial Items, prescribes policies and procedures unique to the acquisition of commercial items under FAR Part 12. FAR Part 12 implements the Government's preference for the acquisition of commercial items as contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 by establishing policies more closely resembling those of the commercial marketplace. The clause, FAR 52.212–4, Contract Terms and Conditions—Commercial Items, that includes terms and conditions applicable to each acquisition procured under FAR Part 12 is, to the maximum extent practicable, consistent with customary commercial practices. The clause includes a provision, FAR 52.212–4(p), Limitation of liability, that provides; “Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.” Also, FAR 12.302(b) allows the contracting officer to tailor the clause at FAR 52.212–4 to adapt to market conditions for each commercial acquisition. In addition to the limitation of liability clause and the provision at FAR 12.302, Federal contracts typically include a broad range of standard contract clauses such as warranties and liquidated damages that provide exclusive remedies for nonperformance that limit the Government to the specific remedies set forth in the clause.

Likewise, the Contract Disputes Act of 1978 provides for the resolution of any failure on the part of the Government and the contractor to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to a Government contract to be a dispute to be resolved in accordance with FAR 52.233–1, Disputes.

Notwithstanding specific adjustments and other remedies provided in Government contracts for contractor deficiencies or nonperformance, concerns have been raised that—

• FAR clause 52.212-4(p) and the "tailoring" provision at FAR 12.302, do not reach the level of commercial standards and that unlimited consequential or other incidental or special damages are not necessary and are, in fact, counterproductive to efficient procurement, raising costs and establishing barriers to commercial companies considering whether to do business with the Federal Government;

• Although FAR 12.302 permits contracting officers to tailor the limitation of liability clause at FAR 52.212-4(p), some companies assert that contracting officers are unwilling to do so, leaving contractors with a take-it or leave-it option and contracts that deviate from the commercial marketplace, making contractors in general less willing to sign on to such contracts;

• The commercial practice, unlike FAR 52.212-4(p), that waives liability for consequential damages resulting from any defect or deficiencies in accepted items, provides for a complete waiver of consequential damages;

• Contractors would make risk decisions and negotiate Government contracts without having to add an uncertainty premium as to liability protection, if FAR Part 12 were appropriately amended to reflect commercial practices; and

• Contractors also request that we make the waiver of consequential damages for commercial products and services available under other provisions of the FAR.

Similarly, the General Accounting Office and periodically GSA's IG raise concerns regarding GSA's right to access and examine contractor records after contract award. GSA's primary vehicle for conducting post-award audits is GSAR 552.215-70, Examination of Records by GSA, that gives the Administrator of GSA, or any duly authorized representative, typically the GSA Inspector General's Office of Audits, access to and the right to examine contractor records relating to over billings, billing errors, compliance with the Industrial Funding Fee (IFF) clause of the contract, and compliance with the Price Reduction Clause under MAS contracts.

In addition to the GSA Examination of Records clause, GSA may use a number of other authorities to conduct a post-award review of a contractor's records. These other authorities include FAR 52.212-5 which authorizes the Comptroller General of the United States to access and examine a contractor's directly pertinent records involving transactions related to the contract; GSAR 515.209-70(b) that

permits a contracting officer to modify the GSA Examination of Records Clause to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with price reduction clause, etc.), and the right of the GSA Inspector General to issue subpoenas for contractor records under the Inspector General Act of 1978.

Contractors' major concerns with GSA's post-award audit authority include complaints that they are too broad and not consistent with commercial contract practices.

In consideration of the above concerns, we have questions as to how the taxpayer may benefit from any revisions to the GSAR to address contractor concerns regarding limitation of liability or post-award audits. We are also interested in learning what, if any, impact the Services Acquisition Reform Act of 2002 and 2003 has on the issue of revising the GSAR to address limitations of liability.

In this advance notice of proposed rulemaking and notice of public meeting, GSA is seeking input from both Government and industry on whether the GSAR should be revised to waive consequential damages in the purchase of commercial items under FAR Parts 12, 13, 14, and 15 and whether GSA should modify its policy and practices with regard to the addition of post award audit clauses into contracts it awards.

Dated: March 4, 2005.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

[FR Doc. 05-4766 Filed 3-10-05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050302053-5053-01; I.D. 022805C]

RIN 0648-AS24

Fisheries of the Northeastern United States; Proposed 2005 Specifications for the Spiny Dogfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2005 fishing year, which is May 1, 2005, through April 30, 2006. The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this rulemaking is to specify the commercial quota and other management measures, such as possession limits, to rebuild the spiny dogfish resource.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m., EST, on March 28, 2005.

ADDRESSES: Comments on the proposed specifications should be sent:

• Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments—2005 Spiny Dogfish Specifications."

• FAX: Fax comments to (978) 281-9135.

• E-mail: E-mail comments to DOG2005@noaa.gov. Include in the subject line of the e-mail comment the following document identifier:

"Comments—2005 Dogfish specifications."

• Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA, and EFHA are accessible via the Internet at <http://www.nero.noaa.gov/nero/>.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978)281-9259, fax (978)281z69135.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens Fishery