

even if the injury or damage was caused by a breach of the bonded contract; and

(d) Once it has taken action to meet its obligations under the bond, the surety is entitled to any indemnification and identical standard of liability to which the contractor was entitled under the contract or applicable laws and regulations.

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 252

[DFARS Case 2002-D016]

#### Defense Federal Acquisition Regulation Supplement; Liability for Loss Under Vessel Repair and Alteration Contracts

**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 increase a contractor's liability for loss or damage under vessel repair and alteration contracts, from \$5,000 to \$50,000 per incident. The increased dollar ceiling is based on adjustments for inflation and the need to provide a financial incentive for contractors to minimize loss or damage.

**DATES:** DoD will consider all comments received by April 15, 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](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2002-D016 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 Haberin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D016.

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 Haberin, (703) 602-0289.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

DoD uses the clause at DFARS 252.217-7012, Liability and Insurance, in master agreements for repair and alteration of vessels. The clause holds a contractor liable for loss or damage resulting from defective contractor workmanship and materials. For any other contractor-incurred loss or damage, the contractor bears the first \$5,000 of loss or damage from each occurrence or incident.

This rule proposes to increase the contractor's liability ceiling from \$5,000 to \$50,000, because—

1. The \$5,000 ceiling dates back to 1982. This dollar ceiling is outdated after considering inflation; and
2. An analysis of contractor-incurred damages for a period of 3 years indicates that 70 percent of the incidents were below \$50,000. DoD anticipates that this increase will incentive contractors to reduce the number of such incidents. Improved contractor performance will not only reduce the vessel "down time" for maintenance and repair, but will also make more efficient use of scarce maintenance dollars that would otherwise be used to pay for the damage between the \$5,000 and the \$50,000 ceilings.

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

#### B. Regulatory Flexibility Act

This rule 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.* DoD has prepared an Initial Regulatory Flexibility Analysis (IRFA), which is summarized as follows:

This rule proposes to increase a contractor's liability from \$5,000 to \$50,000 for loss or damage to a Government vessel, materials, or equipment. The rule will apply to small entities that have a master agreement with DoD for repair and alteration of vessels. There is no available estimate of the total number of small entities that will be subject to the rule. However, the Naval Sea Systems Command (NAVSEA), which is responsible for the maintenance and repair of the majority of vessels, has collected data indicating that, during the period from May 1997 to October 2002, there were 61 occurrences of contractor-caused damages. Of those, 13 occurrences (21 percent) were attributed to small entities. The proposed rule does not impose any reporting, recordkeeping, or other compliance requirements and

does not duplicate, overlap, or conflict with any other Federal rules. This rule will impact small entities, since they will need to increase their insurance coverage from \$5,000 to \$50,000. DoD considered using a ceiling of less than \$50,000, but believes the \$50,000 ceiling to be appropriate because—

1. This ceiling would capture a majority of claims, since a NAVSEA study shows that 70 percent of claims incurred during a recent 3-year period were for amounts less than \$50,000; and

2. This increase should incentivize contractors to reduce the number of such occurrences, thereby reducing vessel "down-time" for maintenance and repair and making more efficient use of scarce maintenance dollars.

A copy of the IRFA may be obtained from the address specified herein. 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-D016.

#### 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 252

Government procurement.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR Part 252 as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

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

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 252.217-7012 [Amended]

2. Section 252.217-7012 is amended as follows:

a. By revising the clause date to read "(XXX 2003)"; and

b. In paragraph (b)(6), by removing "\$5,000" and adding in its place "\$50,000".

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 600**

[Docket No. 030128024-3024-01; I.D. 121002A]

RIN 0648-AQ63

**Fisheries of the United States; National Standard 1**

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

**ACTION:** Advance notice of proposed rulemaking; consideration of revision to national standard 1 guidelines.

**SUMMARY:** NMFS announces that the agency is considering revisions to the national standard guidelines for national standard 1 that specify criteria for determining overfishing and establishing rebuilding schedules. There have been concerns expressed by the scientific community, fisheries managers, the fishing industry, and environmental groups regarding the appropriateness of some aspects of these guidelines, particularly in light of new issues arising from rebuilding programs that have been underway for several years. This action solicits public input on the effectiveness and appropriateness of the national standard 1 guidelines in complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be submitted in writing by March 17, 2003.

**ADDRESSES:** Comments may be mailed to Mr. John H. Dunnigan, Director, Office of Sustainable Fisheries, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1193. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Mark R. Millikin, at 301-713-2341 or via e-mail at Mark.Millikin@noaa.gov.

**SUPPLEMENTARY INFORMATION:** National standard 1 reads, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." In 1996, the Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) to, among other things, provide definitions for "overfishing" and modify the definition of "optimum yield." The Magnuson-Stevens Act, in section 303(a)(10), now

requires each fishery management plan (FMP) to "specify objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished." In addition, section 304(e) specifies requirements for rebuilding overfished fisheries. The revised national standard guidelines, including national standard 1, were proposed at 62 FR 41907, August 4, 1997, and published as final guidelines at 63 FR 24212, May 1, 1998.

As they currently exist, the national standard 1 guidelines provide definitions and require determination, to the extent possible, of maximum sustainable yield (MSY), or an acceptable surrogate; specification of status determination criteria including a maximum fishing mortality threshold and a minimum stock size threshold; ending overfishing and rebuilding overfished stocks; and specification of optimum yield (OY) in fisheries.

In response to the SFA, these national standard guidelines were implemented in 1998, over 5 years ago. Since that time, we have developed new perspectives, new issues, and new problems regarding their application. Concerns that have been identified for possible revision include, but are not limited to, the following:

1. The definition and use of the minimum stock size threshold (MSST) for determining when a stock is overfished. There has been considerable discussion about the utility of the concept of MSST, the definition of MSST contained in the guidelines, difficulties in estimating the MSST (especially in data-poor situations), and identifying appropriate proxies for MSST.

2. Calculation of rebuilding targets appropriate to the prevailing environmental regime. Currently, the guidelines do not address how rebuilding targets should accommodate changing environmental conditions. Rebuilding rates based upon current stock productivity may be inconsistent with rebuilding targets based upon historical stock productivity when there are persistent, long-term changes in environmental conditions.

3. Calculation of maximum permissible rebuilding times for overfished fisheries. The SFA established a maximum allowable 10-year rebuilding time for a fishery, except where the biology of the fish will not allow it or the fishery is managed under an international agreement. If the minimum time for a fishery to rebuild is 10 years or greater, the maximum allowable rebuilding time under the guidelines becomes the time to rebuild in the absence of any fishing mortality,

plus one mean generation time. This has created a discontinuity where the difference in allowable rebuilding times between a stock with a minimum rebuilding time of 9 years and another stock with a minimum rebuilding time of 11 years, may be several decades in the case of long-lived species. This results in the need for much more restrictive management measures in the first case compared to the second, even though there is not much difference between them in terms of rebuilding potential.

4. The definitions of overfishing as they relate to a fishery as a whole or a stock of fish within that fishery. There are currently over 900 fish stocks identified for the purpose of determining their status with regard to overfishing, many of which are caught in small amounts and whose status is unknown. Combining assessments and status determination criteria for assemblages of minor stocks may make more sense biologically and economically than attempting to assess and manage them one by one. Further guidance is needed on the most ecologically sound and economically expedient ways to manage these fisheries.

5. Procedures to follow when rebuilding plans require revision after initiation, especially with regard to modification of the rebuilding time frame. The guidelines do not currently address what to do when observed rebuilding rates are greater or lower than expected or when new assessments change estimates of rebuilding targets or other parameters.

NMFS solicits input from the public regarding: (1) whether or not the national standard 1 guidelines should be revised and (2) if revisions are desired, what parts of the national standard 1 guidelines should be revised, how they should be revised, and why. NMFS will use the information in determining whether to proceed with a revision to the existing guidelines, and if so, the issues to be addressed.

This advance notice of proposed rulemaking has been determined to be significant for the purposes of Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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