

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 3, 9, 42, and 52****[FAR Case 2007–006; Docket 2007–0001;
Sequence 11]****RIN: 9000–AK80****Federal Acquisition Regulation; FAR
Case 2007–006, Contractor
Compliance Program and Integrity
Reporting****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR), at the request of the Department of Justice (DoJ), in order to require contractors to have a code of ethics and business conduct, establish and maintain specific internal controls to detect and prevent improper conduct in connection with the award or performance of Government contracts or subcontracts, and to notify contracting officers without delay whenever they become aware of violations of Federal criminal law with regard to such contracts or subcontracts.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before January 14, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2007–006 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. To search for any document, first select under “Step 1,” “Documents with an Open Comment Period” and select under “Optional Step 2,” “Federal Acquisition Regulation” as the agency of choice. Under “Optional Step 3,” select “Proposed Rules”. Under “Optional Step 4,” from the drop down list, select “Document Title” and type the FAR case number “2007–006”. Click the “Submit” button. Please include your name and company name (if any) inside the document. You may also search for any document by clicking on the “Search for Documents” tab at the top of the screen. Select from the agency field “Federal Acquisition Regulation”,

and type “2007–006” in the “Document Title” field. Select the “Submit” button.

- 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 FAR case 2007–006 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. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2007–006.

SUPPLEMENTARY INFORMATION:**A. Background**

On May 23, 2007, the Office of Federal Procurement Policy received a request from the Department of Justice to open a FAR case to require contractors to have a code of ethics and business conduct, establish and maintain specific internal controls to detect and prevent improper conduct in connection with the award or performance of Government contracts or subcontracts, and to notify contracting officers without delay whenever they become aware of violations of Federal criminal law with regard to Government contracts or subcontracts.

The Councils published a proposed rule under FAR Case 2006–007, Contractor Code of Ethics and Business Conduct, 72 FR 7588, February 16, 2007. That rule proposed creation of a new Subpart 3.10 to address the requirements for a contractor code of ethics and business conduct, and an associated clause at FAR 52.203–XX. The comment period on that proposed rule closed on April 17, 2007, and 27 responses were received. It is still the intent of the Councils to issue a final rule under that case, based on analysis of the public comments received, except that the final rule will not address mandatory disclosure to the Government.

That proposed rule covers some of the same areas requested by DoJ. However, several aspects of the DoJ request go beyond that proposed rule. The Councils therefore have decided to issue a new proposed rule under this FAR case 2007–006 to cover these new proposals.

Public comments are requested on the new changes not included in prior FAR

Case 2006–007. Comments are also requested on mandatory disclosure, and full cooperation, which were in FAR case 2006–007 as examples in the clause of an internal control system. Also note that some paragraphs in that rule, which were not necessary for this rule, were not repeated and will be part of that case’s final rule (hotline posters).

The new changes in this rule include:

Compliance program as part of contractor’s obligation to have “a satisfactory record of integrity and business ethics”

As requested by DoJ, the Councils propose to amend the general standards of responsibility at FAR 9.104–1 to add a cross reference to Subpart 42.15, and to add at FAR 42.1501 “the contractor’s record of integrity and business ethics” as relevant information to be included in past performance information. FAR 42.1501 already includes the requirement to report the contractor’s record of conforming to contract requirements, which will include any information that the contractor has not complied with the clause at FAR 52.203–XX. For contractors that have had prior contracts subject to these new requirements, compliance as reflected in past performance rating will be an element for consideration in assessing whether a contractor meets the standard of having a satisfactory record of integrity and business ethics.

Applicability to small business concerns

The Councils propose that clause at FAR 52.203–XX be included in any contract that exceeds \$5 million, but that the formal ethics awareness program and internal control system are not required if the contractor is a small business concern. This directly reduces the burden on small business concerns.

U.S. Sentencing Guidelines

The Councils propose to modify the clause at FAR 52.203–XX, Contractor Code of Ethics and Business Conduct, which was proposed under FAR Case 2006–007, to more closely match the U.S. Sentencing Commission Guidelines Manual, Section 8B2.1 (available at <http://www.ussc.gov/>). Not only DoJ requests this, but also a number of respondents to the proposed FAR rule 2006–007. The U.S. Sentencing Guidelines provide guidance on what the U.S. Sentencing Commission expects in the way of an effective compliance and ethics program from organizations convicted of a felony or Class A misdemeanor. DoJ and other respondents to the FAR Case 2006–007 proposed rule considered that that proposed rule left out important elements that are covered in the U.S. Sentencing Guidelines and that this can

create confusion. Businesses (especially small businesses) may believe they have met all the compliance requirements of the U.S. Government by following the FAR; this will create a false sense of security. Therefore, this rule proposes the following changes to the clause at FAR 52.203-XX:

- Add definitions of “agent,” and “principals.” The definition of “principals,” is the same as the definition used at FAR 52.209-5. This definition has the advantage that it is already included in the FAR, and includes all the personnel covered in the U.S. Sentencing Guidelines definitions of “governing authority” “high-level personnel,” and “substantial authority personnel.”

- Amplify the paragraph FAR 52.203-XX(b)(2) requirement to promote compliance with the code of business ethics.

- Provide more detail in paragraph FAR 52.203-XX(c)(1) with regard to the ongoing ethics and business conduct awareness and compliance program.

- In paragraph FAR 52.203-XX(c)(2), make all the stated elements of the internal control system mandatory, rather than guidance.

- Add a new paragraph FAR 52.203-XX(c)(2)(ii)(A) requiring assignment of responsibility at a sufficiently high level of the organization and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

- Provide additional detail in paragraph FAR 52.203-XX(c)(2)(ii)(C) with regard to the requirement for periodic reviews.

- Provide that disciplinary action shall be taken not only for improper conduct, but also for failing to take reasonable steps to prevent or detect improper conduct by others.

Contractor Integrity Reporting

The Councils propose to address the reporting of violations of Federal criminal law in connection with the award or performance of a Government contract or subcontract conduct as follows:

- Add at FAR 3.1002 a cross-reference to FAR 9.406-2(b)(1)(v) and 9.407-2(a)(7), that contractors may be suspended and debarred for knowing failure to timely disclose a violation of Federal criminal law in connection with the award or performance of any Government contract performed by the contractor or a subcontract awarded thereunder.

- Modify the clause at FAR 52.203-XX(b)(3), which applies to both large and small business concerns, to require notification to the agency Office of the

Inspector General, with a copy to the contracting officer, whenever the contractor has reasonable grounds to believe that a violation of criminal law has been committed in connection with the award or performance of the contract or any subcontract thereunder.

- Modify the clause at FAR 52.203-XX(c), which does not apply to small business concerns, to mandate that the internal control system of the contractor shall also include this requirement to report violations of Federal criminal law in connection with the award or performance of any Government contract performed by the contractor or a subcontract awarded thereunder.

According to DoJ, the requirement for mandatory disclosure is necessary because few companies have actually responded to the invitation of DoD that they report or voluntarily disclose suspected instance of violations of Federal criminal law relating to the contract or subcontract.

The Councils invite comment as to whether there should be any appropriate limitation on the reporting requirement that accomplishes the objectives of this rule, such as the time period during which the violations to be reported occurred (look back).

Use of clause in contracts for the acquisition of commercial items awarded under FAR Part 12

The Councils do not recommend application of the clause to contracts for the acquisition of commercial items. Requiring commercial contractors to comply with the rule would not be consistent with Public Law 103-355 that requires the acquisition of commercial items to resemble customarily commercial marketplace practices to the maximum extent practicable. Commercial practice encourages, but does not require, contractor codes of business ethics conduct. In particular, the intent of FAR Part 12 is to minimize the number of Government-unique provisions and clauses. The policy at FAR 3.1002 of the proposed rule does apply to commercial contracts. All Government contractors must conduct themselves with the highest degree of integrity and honesty. However, consistent with the intent of Pub. L. 103-355 and FAR Part 12, the clause mandating specific requirements contractor compliance program and integrity reporting is not required in commercial contracts.

Causes for debarment or suspension

As requested by DoJ, the Councils propose modification of FAR 9.406-2 and 9.407-2 to include new cause for debarment or suspension: a knowing failure to timely disclose an overpayment on a Government contract

or violation of Federal criminal law in connection with the award or performance of any Government contract performed by the contractor or any subcontract thereunder.

Clause at FAR 52.203

Consistent with the proposed rule under FAR case 2006-007, the Councils propose use of the clause FAR 52.203-XX in solicitations and contracts expected to exceed \$5 million if the performance period is 120 days or more, except for acquisitions under FAR Part 12 or contracts to be performed outside the United States.

Flowdown

The Councils propose flowdown of the clause FAR 52.203-XX to subcontracts valued at over \$5 million, consistent with the proposed rule under FAR case 2006-007. The Councils decided that the same rationale that supports a threshold of \$5 million for prime contracts, is applicable to subcontracts as well. The other conditions of the proposed rule under FAR case 2006-007 are also still applicable, *i.e.*, performance period of 120 days or more, and the subcontract is not for acquisition of commercial items or to be performed outside the United States.

Full cooperation

In addition, the Councils have included in the proposed rule the requirements that an internal control system must require full cooperation with any Government agencies responsible for audit, investigation, or corrective actions. This requirement was originally derived from the Defense Federal Acquisition Regulation Supplement (DFARS) guidance at DFARS 203.7001(a)(7), with the addition of the word “audit” in response to a public comment under FAR case 2006-007.

The Councils are not including this requirement in the final rule to be issued under FAR case 2006-007, in order to allow further public comment and analysis of the relationship to waiver of the attorney-client privilege.

This is a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes 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.*, because it requires the contractor (including small business concerns) to notify the agency inspector general and the contracting

officer in writing whenever the contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the contractor has committed a violation of Federal criminal law in connection with the award of performance of any Government contract or subcontract. Although the Councils do not expect this to be a significant burden on small businesses, because it only impacts those small businesses that need to report violations of Federal criminal law in connection with the award or performance of a Government contract, the Councils have prepared an Initial Regulatory Flexibility Analysis (IRFA) for public comment, that is summarized as follows:

This Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603.

The objective of the rule is to emphasize the critical importance of integrity in contracting and reduce the occurrence of improper or criminal conduct in connection with the award and performance of Federal contracts and subcontracts.

The rule imposes a clause that is applicable to contracts and subcontracts that exceed \$5 million and with a performance period that exceeds 120 days. The clause does not apply to—

- Acquisition of commercial items, either at the prime or subcontract levels.
- Contracts or subcontracts performed outside the United States.

Although the clause requires all contractors to implement a code of business ethics, the clause requirements for a formal awareness/training program and internal control system will not apply to small business concerns.

The clause imposes a mandatory requirement to notify the agency Office of the Inspector General, with a copy to the contracting officer, whenever the contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the contractor has committed a violation of Federal criminal law in connection with the award or performance of the contract or any subcontract thereunder. All contractors and subcontractors subject to the clause are required to report such violations. In addition, regardless of inclusion of the clause, a new cause for debarment and suspension has been added, for failure to timely report any such known violation of Federal criminal law.

Based on Fiscal Year 2006 data collected from the Federal Procurement Data System, the Councils estimate that this clause will apply to 1800 prime contractors per year, of which 700 companies are small business concerns. The clause also flows down to subcontracts that exceed \$5 million, and we estimate that approximately 700 additional small business concerns will meet these conditions. We calculate the number of small business concerns that will be required to submit the report of violation of Federal criminal law with regard to a Government contract or subcontracts as follows:

700 contractors + 700 subcontractors = $1,400 \times 2\% = 28$.

In addition, although there is no clause required, all contractors will be on notice that they may be suspended or debarred for failure to report known violations of Federal criminal law with regard to a Government contract or subcontract. In Fiscal Year 2006 there were 144,854 small business concerns listed in FPDS-NG with unique DUNS numbers. We estimate that of the listed small business concerns, approximately 116,000 (80 percent) will receive contracts in a given fiscal year. Government small business experts guess that at least twice that number of small businesses (232,000) will receive subcontracts. However, the only small business concerns impacted by this cause for suspension or debarment are those small business concerns that are aware of violation of Federal criminal law with regard to their Government contracts or subcontracts. Subtracting out those contracts and subcontracts covered by the clause (700), we estimate this number as follows: $(115,300 + 231,300 = 346,600 \times .5\% = 1,733)$. We estimate a lower percentage than used for contracts and subcontracts that contain the clause, because these are lower dollar contracts and subcontracts, including commercial contracts, and there may be less visibility into violations of Federal criminal law. Because there is no contract clause, we estimate that only 1 percent of those contractors/ subcontractors that are aware of a violation of Federal criminal law in regard to the contractor or subcontract will voluntarily report such violation to the contracting officer.

The rule requires contractors to report to the agency inspector general and the contracting officer of violations of Federal criminal law in connection with the award or performance of any Government contract or subcontract for contracts and subcontracts that exceed \$5 million, excluding contracts/ subcontracts to be performed outside the United States or awarded under FAR Part 12. Such a report would probably be prepared by company management, and would probably involve legal assistance to prepare.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Councils adopted the following alternatives in order to minimize the impact on small business concerns:

- The requirement for formal training programs and internal control systems are inapplicable to small business concerns, rather than tying the requirement to a dollar threshold based on contract value, which might make the requirements applicable to some small business concerns.
- The requirement for mandatory reporting is limited to violations of Federal criminal law in connection with performance or award of a Government contract or subcontract, rather than requiring report of any improper conduct, even that which is not a violation of Federal criminal law.

The FAR 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 FAR Secretariat. The Councils will consider comments

from small entities concerning the affected FAR Parts 3, 9, 42, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2007–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat will submit a request for approval of a new information collection requirement concerning OMB Number 9000–00XX, Contractor Compliance Program and Integrity Reporting, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

There will be an estimated 20 burden hours for the required reporting to the contracting officer of violations of Federal criminal law in connection with the award or performance of any Government contract or subcontract.

Annual Reporting Burden:

Public reporting burden for this collection of information is estimated based on review of Fiscal Year 2006 contract awards as entered in the Federal Procurement Data System, the Councils estimate that 1400 contractors per year will be subject to the new clause FAR 52.203–XX (contracts greater than \$5 million, not including contracts awarded under FAR Part 12). The Councils further estimate that of those 1400 contractors, 28 (2 percent) will report violations of Federal criminal law with regard to performance or award of a Government contract or subcontract. In addition, the Councils estimate that 17 contractors that do not have the clause at FAR 52.203–XX in the contract will also report such violations.

The annual reporting burden is estimated as follows:

Respondents: 45

Responses per respondent: 1

Total annual responses: 45

Preparation hours per response: 3

Total response burden hours: 135

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than January 14, 2008 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control Number 9000–00XX, Contractor Compliance

Program and Integrity Reporting, in all correspondence.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-00XX, Contractor Compliance Program and Integrity Reporting, in all correspondence.

List of Subjects in 48 CFR Parts 3, 9, 42, and 52

Government procurement.

Dated: November 7, 2007

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 3, 9, 42, and 52 as set forth below:

1. The authority citation for 48 CFR parts 3, 9, 42, 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 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Add Subpart 3.10 to read as follows:

Subpart 3.10—Contractor Code of Business Ethics and Conduct

Sec.

3.1000 Scope of subpart.

3.1001 [Reserved]

3.1002 Policy.

3.1003 Mandatory requirements.

3.1004 Contract clauses.

3.1000 Scope of subpart.

This subpart prescribes policies and procedures for the establishment of contractor codes of business ethics and conduct.

3.1001 [Reserved]

3.1002 Policy.

(a) Government contractors must conduct themselves with the highest degree of integrity and honesty.

(b) Contractors should have a written code of business ethics and conduct. To promote compliance with such a code of business ethics and conduct, contractors should have an employee business ethics and compliance training program and an internal control system that—

(1) Are suitable to the size of the company and extent of its involvement in Government contracting;

(2) Facilitate timely discovery of improper conduct in connection with Government contracts; and

(3) Ensure corrective measures are promptly instituted and carried out.

(c) A contractor may be suspended and/or debarred for knowing failure to timely disclose a violation of Federal criminal law in connection with the award or performance of any Government contract performed by the contractor or a subcontract awarded thereunder (see 9.406-2(b)(1)(v) and 9.407-2(a)(7)).

3.1003 Mandatory requirements.

Although the policy in section 3.1002 applies as guidance to all Government contractors, the contractual requirements set forth in the clauses at 52.203-XX, Contractor Code of Business Ethics and Conduct are mandatory if the contracts meet the conditions specified in the clause prescriptions at 3.1004.

3.1004 Contract clauses.

Insert the clause at FAR 52.203-XX, Contractor Code of Business Ethics and Conduct, in solicitations and contracts if the value of the contract is expected to exceed \$5,000,000 and the performance period is 120 days or more, except when the contract—

(a) Will be for the acquisition of a commercial item awarded under FAR Part 12; or

(b) Will be performed entirely outside the United States.

PART 9—CONTRACTOR QUALIFICATIONS

3. Amend section 9.104-1 by revising paragraph (d) to read as follows:

9.104-1 General standards.

* * * * *

(d) Have a satisfactory record of integrity and business ethics (for example, see Subpart 42.15);

* * * * *

4. Amend section 9.406-2 by revising paragraph (b)(1) introductory text and adding paragraph (b)(1)(v) to read as follows:

9.406-2 Causes for debarment.

* * * * *

(b)(1) A contractor, based upon a preponderance of the evidence, for any of the following—

* * * * *

(v) Knowing failure to timely disclose—

(A) An overpayment on a Government contract; or

(B) Violation of Federal criminal law in connection with the award or performance of any Government contract or subcontract.

* * * * *

5. Amend section 9.407-2 by redesignating paragraph (a)(7) as (a)(8) and adding a new paragraph (a)(7) to read as follows:

9.407-2 Causes for suspension.

(a) * * *

(7) Knowing failure to timely disclose—

(i) An overpayment on a Government contract; or

(ii) Violation of Federal criminal law in connection with the award or performance of any Government contract or subcontract; or

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

6. Amend section 42.1501 by revising the last sentence to read as follows:

42.1501 General.

* * * It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; the contractor's record of integrity and business ethics, and generally, the contractor's business-like concern for the interest of the customer.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Add section 52.203-XX to read as follows:

52.203-XX Contractor Code of Business Ethics and Conduct.

As prescribed in 3.1004, insert the following clause:

CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DATE)

(a) Definitions. As used in this clause—

Agent means any individual, including a director, an officer, an employee, or an

independent contractor, authorized to act on behalf of the organization.

Principals means officers, directors, owners, partners, and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.* (1) Within 30 days after contract award, unless the contracting officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Provide a copy of the code to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) The Contractor shall notify, in writing, the agency Office of the Inspector General, with a copy to the Contracting Officer, whenever the Contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law in connection with the award or performance of this contract or any subcontract thereunder.

(c) *Business ethics awareness and compliance program and internal control system for other than small businesses.* This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract. The Contractor shall establish the following within 90 days after contract award, unless the contracting officer establishes a longer time period—

(1) *An ongoing business ethics and conduct awareness and compliance program.*

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level of the organization and

adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include within the organization principals whom due diligence would have exposed as having engaged in conduct that is illegal or otherwise in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the organization's business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely reporting, in writing, to the agency Office of the Inspector General, with a copy to the Contracting Officer, whenever the Contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law in connection with the award or performance of any Government contract performed by the Contractor or a subcontract thereunder; and

(G) Full cooperation with any Government agencies responsible for audit, investigation, or corrective actions.

(d) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days, except when the subcontract—

(i) Is for the acquisition of a commercial item; or

(ii) Is performed outside the United States.

(2) In altering this clause to identify the appropriate parties, all reports of violation of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(End of clause)

[FR Doc. 07-5670 Filed 11-9-07; 11:21 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071030625-7626-01]

RIN 0648-XC84

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2008 Summer Flounder, Scup, and Black Sea Bass Specifications; 2008 Research Set-Aside Projects

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2008 summer flounder, scup, and black sea bass fisheries and provides notice of three conditionally approved projects that will be requesting Exempted Fishing Permits (EFPs) as part of the Mid-Atlantic Fishery Management Council's (Council) Research Set-Aside (RSA) program. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. Furthermore, regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require a notice to be published to provide interested parties the opportunity to comment on applications for EFPs. The intent of this action is to establish harvest levels that assure that the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP are not exceeded and to allow for rebuilding of the stocks as well as to provide notice of EFP requests, all in accordance with the Magnuson-Stevens Act.

DATES: Comments must be received on or before December 3, 2007.

ADDRESSES: You may submit comments, identified by RIN 0648-XC84, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: