

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 29, 2010.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.650 to subpart C to read as follows:

**§ 180.650 Isoxaben; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the herbicide isoxaben, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only isoxaben, N-[3-(1-ethyl-1-methylpropyl)-5-isoxazolyl]-2, 6-dimethoxybenzamide, in or on the commodity.

Commodity	Parts per million
Almond, hulls .....	0.40
Grape .....	0.01
Nut, tree, Group 14 .....	0.02
Pistachio .....	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 216 and 252**

**Defense Federal Acquisition Regulation Supplement; Award-Fee Reductions for Health and Safety Issues (DFARS Case 2009-D039)**

**AGENCY:** Defense Acquisition Regulations System; Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 823 of the National Defense Authorization Act for Fiscal Year 2010. Section 823 requires contracting officers to consider reduction or denial of award fee if contractor or subcontractor actions jeopardize the health or safety of Government personnel.

**DATES:** *Effective Date:* November 12, 2010.

*Comment Date:* Comments on the interim rule should be submitted to the address shown below on or before January 11, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009-D039, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D039 in the subject line of the message.
- *Fax:* 703-602-0350.
- *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy G. Williams, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment, please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, 703-602-0328.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84), requires DoD to revise

guidance issued pursuant to section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 823 is entitled "Authority for Secretary of Defense to Reduce or Deny Award Fees to Companies Found to Jeopardize Health or Safety of Government Personnel." For covered contracts that include award fees, if a contractor or its subcontractor acts with gross negligence or reckless disregard for health or safety, causing serious bodily injury or death of Government personnel, then the contracting officer must consider reduction or denial of award fee for the period in which that action occurred. This interim rule provides a clause to detail those dispositions where a reduction or denial of award fee is applicable. The clause also allows for the recovery of all or part of any award fees paid for any previous award fee evaluation period during which contractor actions caused serious bodily injury or death of Government personnel.

**II. Executive Order 12866**

This is not 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.

**III. Regulatory Flexibility Act:**

DoD does not expect this interim 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 most contracts awarded to small entities use simplified acquisition procedures or, based on the circumstances, may be awarded on a competitive fixed-price basis or a cost-plus-fixed-fee basis. Contracts awarded to small businesses do not generally utilize award-fee type incentive fee structure. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD 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 (DFARS Case 2009-D039) in correspondence.

**IV. 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.*

### V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comments. This action is necessary because section 823 of the National Defense Authorization Act for Fiscal Year 2010 requires implementation no later than 180 days after October 28, 2009. If this requirement is not implemented in the DFARS, contracting officers may not be aware of the requirement to consider reduction or denial of the award fee paid in a period in which actions of gross negligence or reckless disregard of health or safety by the contractor or its subcontractors caused serious bodily injury or death of Government personnel. However, pursuant to 41 U.S.C. 418b, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 216 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

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

### PART 216—TYPES OF CONTRACTS

■ 2. Sections 216.405–270 and 216.406 are added to subpart 216.4 to read as follows:

#### 216.405–270 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

(a) *Definitions.*

*Covered incident* and *serious bodily injury*, as used in this section, are defined in the clause at 252.216–7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

(b) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), the contracting officer shall include in the evaluation of any award fee plan, a review of contractor actions that jeopardized the health and safety of Government personnel.

(c) If, in performing under a contract, contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel, the contracting officer shall consider reducing or denying the award fee for any of the relevant award fee periods in which the covered incident occurred, including the recovery of all or part of any award fees previously paid for such period.

#### 216.406 Contract clauses.

Use the clause at 252.216.7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award fee provisions.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.216–7004 is added as follows:

#### 252.216.7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

As prescribed in 216.406 use the following clause:

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (NOV 2010)

(a) *Definitions.* As used in this clause—  
Covered incident—

(1) Means any incident in which the Contractor, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (2) of this definition—

(i) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(ii) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(2) Includes those incidents that have resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the

outcomes specified in paragraphs (2)(i), (2)(ii), or (2)(iii) of this definition.

*Serious bodily injury* means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor's or its subcontractor's actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.  
(End of clause)

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XZ88

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; apportionment of reserves; request for comments.

**SUMMARY:** NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to allow fishing operations to continue. It is intended to promote the goals and objectives of the fishery management plan for the Bering Sea and Aleutian Islands management area.

**DATES:** Effective November 10, 2010 through 2400 hrs, Alaska local time, December 31, 2010. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, November 26, 2010.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XZ88 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the