sufficient commonality between Anaheim and the existing communities in the television market to merit the inclusion of Anaheim in that market.'' Dimension Cable in its comments incorporated by reference comments it had filed in Docket 93–209, a proceeding involving the New York television market in which parties had been invited to address issues relating to market hyphenation in large and complex markets like the New York and Los Angeles markets. In those comments Dimension argued that television stations in large markets were constrained in seeking to exercise mandatory cable carriage rights by copyright payment obligations outside of the market area defined by § 76.51 of the Commission's rules. It then argued:

> Had Congress intended to relieve broadcast stations of potential copyright liability in order to qualify for must carry status, it could have required wholesale revisions to § 76.51 of the Commission rules or amended section 111 of the Copyright Act. Rather than doing so, Congress expressed its intent not to work any fundamental changes in the copyright law. As commenters in this proceeding have urged, the Commission should not now allow stations to obtain must carry rights (and end-run the statute) through market redesignation * * * (footnotes omitted).

Thus, it urged the Commission not to adopt the proposed market redesignation.

Discussion

6. A ''hyphenated market'' has been described by the Commission as a television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area. In evaluating past requests for hyphenation of a market, the Commission has considered the following as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area (a concern which has reduced relevance under the must carry rules promulgated as a result of the 1992 Cable Act); (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent ''with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete.''

7. Based on the facts set forth in the Notice of Rulemaking, which have not been disputed by the comments herein, and on the responsive comments, we believe that a case for redesignation of the subject market has been set forth so that this proposal should be adopted. It appears from the information before us that television stations licensed to Los Angeles, San Bernardino, Corona, Riverside and Anaheim do compete in the proposed combined market area, and that sufficient evidence has been presented to demonstrate commonality between the proposed community to be added to the market designation and the market as a whole. Such a rationalization of the competitive situation appears to be the public benefit which Congress anticipated by instructing the Commission, in section 614(f) of the Cable Television Consumer Protection and Competition Act of 1992, to make necessary revisions to update the market list. This action, moreover, is entirely consistent with the Report and Order in Docket 93–207, 58 FR 67694, December 22, 1993, which added Riverside as a designated community in the market.

8. The issue raised by Dimension Cable regarding copyright liability has largely been resolved with the passage of the Satellite Home Viewer Act of 1994, which amended section 111(f) of title 17, United States Code. Under this Act, a station located within the same ADI as a cable system is no longer considered a ''distant signal'' on that system for purposes of compulsory copyright license liability and, therefore, is not subject to the additional copyright fees attendant to ''distant signal'' carriage within the market. Thus, the issue raised by Dimension has now been directly addressed by Congress and is not an obstacle to the action proposed in this proceeding.

9. As an additional matter, since no station is licensed to Fontana, however, and since only communities with licensed stations have ''specified zones'' (§ 76.5(e)) and contribute to the area and coverage of a hyphenated market (§ 76.5(f)), reference to it will be eliminated from § 76.51.

10. Accordingly, it is ordered, that effective October 2, 1995, § 76.51 of the Commission's rules is amended to include Anaheim and delete Fontana as follows:

> Los Angeles-San Bernardino-Corona-Riverside-Anaheim, California.

11. It is further ordered, that this proceeding is terminated.

12. This action is taken pursuant to authority delegated by § 0.321 of the Commission's rules. 47 CFR 0.321.

List of Subjects in 47 CFR Part 76

Cable Television.

Part 76, Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 76.51 is amended by revising paragraph (a)(28) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(28) Los Angeles-San Bernardino-Corona-Riverside-Anaheim, California.

* * * * *

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 95–21610 Filed 8–30–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 228 and 252

[DFARS Case 95–D305]

Defense Federal Acquisition Regulation Supplement; Alternatives to Miller Act Bonds

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide alternatives to Miller Act bond requirements for construction contracts between $25,000 and $100,000.

DATES: *Effective Date:* August 31, 1995.

Comment Date: Comments on the interim rule should be submitted in writing to the address below on or before October 30, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D305

in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim DFARS rule provides alternative payment protections for construction contracts between $25,000 and $100,000, pending implemention of Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (FASA), in the FAR. Section 4104(b)(2) of FASA requires FAR revisions to provide alternatives to payment bonds as payment protections for suppliers of labor and material under construction contracts between $25,000 and $100,000. Federal Acquisition Circular 90–29 (60 FR 34732, July 3, 1995) revised FAR Part 13 to exclude construction contracts and subcontracts at or below the simplified acquisition threshold ($100,000) from Miller Act bond requirements, in accordance with Section 4101(b)(1) of FASA.

B. Regulatory Flexibility Act

This interim 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.*, because the rule provides alternatives to payment bonds as payment protection for construction contracts between $25,000 and $100,000. The objective of the rule is to make it easier for small businesses to provide payment protections under construction contracts. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address specified herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D305 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. The applicable OMB Control Number is 9000–0045.

D. Determination of Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment because it is necessary to provide payment protections for construction contracts between $25,000 and $100,000. However, comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 228 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council

Therefore, 48 CFR Part 228 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 228 and 252 continues to read as follows:

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

PART 228—BONDS AND INSURANCE

2. Sections 228.171, 228.171–1, 228.171–2, and 228.171–3 are added to read as follows:

228.171 Alternative payment protections in construction contracts between $25,000 and $100,000.

228.171–1 General. For construction contracts greater than $25,000, but not greater than $100,000, the contracting officer shall select one or more of the following payment protections which the contractor may submit to the Government for the protection of suppliers of labor and material:

(a) A payment bond.

(b) An irrevocable letter of credit.

(c) A tripartite escrow agreement. The prime contractor establishes an escrow account in a Federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement shall establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in accordance with the agreement, or triggers the disputes resolution procedures if required.

(d) Certificates of deposit. The contractor deposits certificates of deposit with the contracting officer, in an acceptable form, executable by the contracting officer, and immediately refundable in an amount equal to the penal amount of the payment bond waived.

(e) A deposit of the types of security listed in 28.204.

228.171–2 Amount required.

(a) The requirements at FAR 28.102–2(b), for the amount of payment bonds, also apply to the alternative payment protections described in 228.171–1. In addition, the payment protection must provide protection for the full contract performance period plus one year, and must authorize the contracting officer to immediately access funds at any time within the contracting officer's discretion.

(b) The requirements at FAR 28.102–2(c), for the penal sum of bonds for requirements and indefinite-quantity contracts, also apply to the alternative payment protections described in 228.171–1.

228.171–3 Contract clause.

Use the clause at 252.228–7007, Alternative Payment Protections, in solicitations and contracts for construction, when the estimated or actual value exceeds $25,000 but does not exceed $100,000. Complete the clause by specifying the payment protection or protections selected (see 228.171–1), the penal amount required, and the deadline for submission.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.228–7007 is added to read as follows:

252.228–7007 Alternative Payment Protections.

As prescribed in 228.171–3, use the following clause:

Alternative Payment Protections (Aug. 1995)

(a) The Contractor shall submit one of the following payment protections:

(b) The penal sum of the payment protection shall be in the amount of $_____.

(c) The submission of the payment protection is required by _____.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period, and shall authorize the Contracting Officer to immediately access funds at any time and withhold funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties, except for escrow agreements which provide for a disputes resolution procedure.

(e) Except for escrow agreements which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that nonpayment has occurred.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material who signed the escrow agreement.

(End of clause)

[FR Doc. 95–21628 Filed 8–30–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

[Docket No. 950815207–5207–01; I.D. 080795E]

RIN 0648–AI09

Limited Access Management of Federal Fisheries In and Off of Alaska; Individual Fishing Quota Program

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues an interim rule to allow vessels subject to existing Individual Fishing Quota (IFQ) Program recordkeeping and observer coverage requirements to fish for sablefish and Pacific halibut in a regulatory area in which persons aboard the vessel hold IFQ, even when the amount of IFQ held for the area is less than the total amount of IFQ species on board the vessel. This action is necessary to allow persons who hold IFQ for more than one IFQ regulatory area to harvest IFQ species in those areas during the same fishing trip and is intended to facilitate more efficient harvesting by IFQ holders.

DATES: Effective on August 25, 1995. Comments must be received at the following address no later than October 2, 1995.

ADDRESSES: Comments on the interim rule must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the Regulatory Impact Review (RIR) for this action may be requested from the same address.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: The IFQ Program limits access to the halibut and sablefish fixed gear fisheries through the annual issuance of IFQ. Further information about the IFQ program is contained in the preamble to the final implementing regulations published November 9, 1993 (58 FR 59375). Holders of IFQ may harvest their IFQ, specific to species, vessel category, and regulatory area, any time during the IFQ fishing season. Close monitoring of the harvest of IFQ halibut and IFQ sablefish is essential to prevent exceeding the total allowable catch for the halibut and sablefish fixed gear fisheries in each regulatory area.

A regulation at 50 CFR § 676.16(d) was designed to ensure that IFQ holders harvested their IFQ in the designated regulatory area. This regulation, enforced by at-sea monitoring of catches, makes it unlawful for any person to:

> Retain IFQ halibut or IFQ sablefish on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and IFQ regulatory area in which the vessel is operating, and that is currently held by all IFQ card holders on board the vessel.

Although this provision was not intended to require persons to offload all IFQ species caught in one regulatory area before fishing in another regulatory area, this is the practical effect, especially for an IFQ holder with small amounts of IFQ in multiple areas, because the IFQ held in one regulatory area frequently is too small to cover the IFQ species harvested in another regulatory area. For example, a fisherman with 5 mt of IFQ for halibut in each of two adjacent areas is not able to harvest the total of 10 mt of halibut during the same fishing trip. The fisherman would be in violation of § 676.16(d) as soon as he harvested any IFQ halibut in the second area in addition to the 5 mt already harvested in the first area and still on board the vessel because the total amount on board the vessel would exceed the fisherman's 5 mt IFQ for halibut in the second area.

Members of the fishing industry requested the North Pacific Fishery Management Council (Council) to relieve the requirement specified in § 676.16(d). At its meeting on June 21–25, 1995, the Council recommended that NMFS implement an emergency rule that would allow catcher/processor and catcher vessels subject to existing recordkeeping and observer coverage requirements to retain IFQ halibut or IFQ sablefish in excess of the total amount of unharvested IFQ applicable to that vessel in the IFQ regulatory area in which the vessel is operating. The Council also recommended that § 676.16(d), which currently prohibits such retention, be amended for future years.

NMFS determined that an interim rule could relieve this requirement for vessels subject to existing recordkeeping and observer coverage requirements. A vessel operator must continue to comply with the requirements in paragraph (d), unless the vessel has an observer aboard pursuant to 50 CFR part 677 while fishing for the IFQ species in the regulatory area of concern and complies with the applicable existing daily fishing logbook requirements at 50 CFR §§ 301.15, 672.5(b)(2), and 675.5(b)(2). The observer and recordkeeping requirements will enable authorized officers to verify that the IFQ halibut or IFQ sablefish on board was lawfully harvested in the appropriate IFQ regulatory area by an IFQ card holder with sufficient unused IFQ applicable to the vessel category and IFQ regulatory area in which the IFQ halibut or IFQ sablefish was harvested.

Relieving the requirement provides added flexibility to the IFQ holder's fishing schedule while still allowing NMFS to monitor closely IFQ harvests. A vessel not subject to the daily fishing logbook requirements or without observer coverage will still remain prohibited from having more of an IFQ species on board in a particular regulatory area than authorized under existing paragraph (d).

Although the Council requested that this relief be provided in all IFQ regulatory areas, current provisions in 50 CFR part 301 require vessel clearances for IFQ halibut harvested in most of Area 4. This vessel clearance requirement, while not in direct conflict with the interim rule, will diminish some of the interim rule's relief. Specifically, § 301.14 requires a vessel operator who intends to harvest halibut in Areas 4A, 4B, 4C, or 4D to obtain a vessel clearance in designated ports before commencing harvest of halibut and before unloading any halibut. Although the requirements of § 301.14 will diminish the benefits of relieving the requirements of § 676.16(d), additional changes to the requirements of § 301.14 must be approved and adopted by the International Pacific Halibut Commission. Vessel clearances required in § 301.14 do not apply to vessels that do not harvest halibut.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that the requirement specified in § 676.16(d) for a vessel that has observer coverage and that complies with daily fishing log requirements does not benefit the accuracy of catch monitoring and has an unintended wasteful effect. Any delay in removing that requirement could result in unnecessary waste without providing significant public benefit. Accordingly, the AA finds good cause to waive the requirement to provide prior