

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

SUPPLEMENTARY INFORMATION:

A. Background

This interim DFARS rule revises the interim rule which was published in the Federal Register on August 31, 1995 (60 FR 45376). It provides alternative payment protections for construction contracts between \$25,000 and \$100,000, pending implementation of Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) in the FAR. This rule has been revised to require that the contracting officer select two or more alternative payment protections, and encourages the contracting officer to include irrevocable letters of credit as one of the selected alternatives. In addition, this rule excludes payment bonds from the provisions authorizing the contracting officer to access funds under the payment protection.

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 To 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 further public comment because it is necessary to revise the

payment protections for construction contracts between \$25,000 and \$100,000, based on comments received on the interim rule published in the Federal Register on August 31, 1995 (60 FR 45376). The wording of the initial interim rule regarding contracting officer access to funds under payment bonds erroneously resulted in a "forfeiture type" payment bond rather than a traditional type payment bond consistent with the terms and conditions of the Miller Act. 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 Parts 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. Section 228.171-1 is revised to read as follows:

228.171-1 General.

(a) For construction contracts greater than \$25,000, but not greater than \$100,000, the contracting officer shall select two or more of the following payment protections, giving particular consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

- (1) A payment bond.
- (2) An irrevocable letter of credit.
- (3) 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.

(4) Certificates of deposit. The contractor deposits certificates of deposit from a federally insured financial institution with the contracting officer, in an acceptable

form, executable by the contracting officer.

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

(b) The contractor shall submit to the Government one of the payment protections selected by the contracting officer.

3. Section 228.171-2 is amended by revising paragraph (a) to read as follows:

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.

* * * * *

4. Section 228.171-3 is revised to read as follows:

228.171-3 Contract clause.

Use the clause at 252.228-7007, Alternative Payment Protections, in solicitation 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 protections selected (see 228.171-1(a)), the penal amount required, and the deadline for submission.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.228-7007 is amended by revising the clause date and by revising paragraphs (d) and (e) to read as follows:

252.228-7007 Alternative Payment Protections.

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

ALTERNATIVE PAYMENT PROTECTIONS (FEB 1996)

* * * * *

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, 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 a nonpayment has occurred, and to withhold funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 620**

[Docket No. 9601-26016-6016-01; I.D. 012696C]

RIN 0648-XX41

General Provisions for Domestic Fisheries; Closes Block Island Sound to All Fishing

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

ACTION: Emergency interim rule.

SUMMARY: NMFS has determined that, in order to protect public health, safety, and welfare, it is necessary to close a portion of Federal waters in Block Island Sound off the coast of the State of Rhode Island, to all fishing. Closure of this area is made at the request of the State of Rhode Island. The closure will be in effect for a period of 90 days beginning on the effective date of this rule, unless conditions allow NMFS to terminate it sooner. This closure is implemented due to the adverse environmental conditions created by the recent grounding of an oil barge, and subsequent oil spill. This action will prevent fishermen from harvesting fish which may be contaminated.

EFFECTIVE DATE: January 26, 1996 through May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone at (508) 281-9221.

SUPPLEMENTARY INFORMATION: This emergency action is taken in response to the January 19, 1996, grounding of an oil barge, and subsequent spill of more than 700,000 gallons (2.6 million L.) of fuel oil into the waters of Block Island Sound. The closed area is defined as Federal waters of Block Island Sound bounded as follows: From the point where LORAN line 25740 intersects with the 3 nautical mile line south of Easton Point, RI, proceeding southwesterly along the 25740 line to its intersection with the 43870 line, thence southwesterly along the 43870 line to the intersection of the 3 nautical mile line east of Block Island, RI, thence northwesterly along said 3 nautical mile line to the intersection of the 14540 line, thence northwesterly along the 14540 line to the intersection of the 3 nautical mile line, thence northeasterly along the 3 nautical mile line to the starting point. Vessels fishing outside of this area may pass through the closed area, provided that all fishing gear is stowed and

unavailable for immediate use in accordance with 50 CFR sections 625.24(f), 650.21(a)(2)(iii), and 651.20(c)(4)(i).

The complete extent of the ecological damage due to the spill is not known at this time. Oil exposure has been shown to be lethal to marine life, and can accumulate and linger in the food chain. The purpose of this action is to prevent vessels from harvesting contaminated fish from the area of the spill in the interest of public health. The emergency nature of the adverse environmental condition created by the presence of oil in the area renders prior notice and opportunity to comment on a proposed closure contrary to the public interest. Consequently, the emergency action authority vested in the Secretary of Commerce under section 305(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1855(c) is invoked to make the closure effective immediately.

The closure prohibits all fishing in the area beginning on January 26, 1996, through April 29, 1996, unless circumstances exist that permit earlier reopening of the area. The area may reopen earlier if NMFS, in association with other State and Federal agencies, determines that the environmental degradation of the marine environment represented by the presence of the oil, and the consequential negative impact on fishing operations, and risk to public health, safety, and welfare has ended.

This action has the support of the State of Rhode Island, the U.S. Food and Drug Administration, and U.S. Coast Guard. The New England Fishery Management Council was informed of the planned action and made no comment.

Classification

The Secretary finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment or to delay for 30 days the effective date of these emergency regulations under the provisions of sections 553 (b) and (d) of the Administrative Procedures Act.

List of Subjects in 50 CFR Part 620

Fisheries, Fishing.

Dated: January 26, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 620 is amended as follows:

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

1. The authority citation for part 620 continues to read as follows:

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

2. In § 620.7, paragraph (i) is added to read as follows:

§ 620.7 General prohibitions.

* * * * *

(i) Fish in Federal waters of Block Island Sound bounded as follows: From the point where LORAN line 25740 intersects with the 3 nautical mile line south of Easton Point, Rhode Island, proceeding southwesterly along the 25740 line to its intersection with the 43870 line, thence, southwesterly along the 43870 line to the intersection of the 3 nautical mile line east of Block Island, Rhode Island, thence northwesterly along said 3 nautical mile line to the intersection of the 14540 line, thence northwesterly along the 14540 line to the intersection of the 3 nautical mile line, thence northeasterly along the 3 nautical mile line to the starting point. Vessels fishing outside of this area may pass through the closed area, provided that all fishing gear is stowed and unavailable for immediate use in accordance with the regulations cited in 50 CFR 625.24(f), 650.21(a)(1)(iii), and 651.20(c)(4)(i).

[FR Doc. 96-2043 Filed 1-29-96; 11:54 am]

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50 CFR Part 672

[Docket No. 951120272-5272-02; I.D. 012696D]

Groundfish of the Gulf of Alaska; Pollock in Statistical Area 63 of the Central Regulatory Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is terminating the closure to directed fishing for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to fully utilize the interim total allowable catch (TAC) of pollock in that area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), January 29, 1996, until superseded by the final 1996 specifications.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS