

procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007–D027.

### 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 Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

- Therefore, 48 CFR parts 225 and 252 are amended as follows:
- 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

### PART 225—FOREIGN ACQUISITION

#### 225.7010 [Removed and Reserved]

- 2. Section 225.7010 is removed and reserved.

#### 225.7010–1 through 225.7010–4 [Removed]

- 3. Sections 225.7010–1 through 225.7010–4 are removed.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.225–7023 [Removed and Reserved]

- 4. Section 252.225–7023 is removed and reserved.

[FR Doc. E8–8694 Filed 4–22–08; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 234, 242, and 252

RIN 0750–AF19

### Defense Federal Acquisition Regulation Supplement; Earned Value Management Systems (DFARS Case 2005–D006)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements for DoD contractors to establish and maintain earned value management systems. The rule also eliminates requirements for DoD contractors to submit cost/schedule status reports.

**EFFECTIVE DATE:** April 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2005–D006.

### SUPPLEMENTARY INFORMATION:

#### A. Background

This final rule updates DFARS text addressing earned value management policy for DoD contracts. The rule supplements the final FAR rule published at 71 FR 38238 on July 5, 2006, and establishes DoD-specific earned value management requirements, as permitted by the FAR. The DFARS rule is consistent with the policy in the memorandum issued by the Under Secretary of Defense (Acquisition, Technology, and Logistics) on March 7, 2005, *Subject:* Revision to DoD Earned Value Management Policy (available at [http://www.acq.osd.mil/dpap/ops/policy\\_vault.html](http://www.acq.osd.mil/dpap/ops/policy_vault.html)).

The DFARS changes in this rule include the following:

- For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the rule requires an earned value management system that complies with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748).

- For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the rule requires an earned value management system that has been determined by the cognizant Federal agency (as defined in FAR 2.101) to be in compliance with the guidelines in ANSI/EIA–748.

- For cost or incentive contracts and subcontracts valued at less than \$20,000,000, the rule provides that application of earned value management is optional and is a risk-based decision.

- For firm-fixed-price contracts and subcontracts of any dollar value, the rule discourages the application of earned value management.

- The Defense Contract Management Agency is assigned responsibility for

determining earned value management compliance when DoD is the cognizant Federal agency.

- Requirements for contractor cost/schedule status reports are eliminated.

DoD published a proposed rule at 71 FR 3449 on January 23, 2006. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* One respondent stated that the \$20,000,000 threshold for earned value management (EVM) further aggravates the ability to mitigate cost, schedule, and technical risks, since receiving EVM data below that threshold would be helpful in assisting leadership to make affordable decisions.

*DoD Response:* The rule allows for EVM below the \$20,000,000 threshold when its application is determined to be appropriate as the result of a cost-benefit analysis.

2. *Comment:* Two respondents stated that the rule should be revised to specifically state that EVM requirements do not apply to time-and-materials, labor-hour, and level-of-effort contracts.

*DoD Response:* The rule requires EVM to be applied only on cost and incentive type contracts and subcontracts over certain thresholds. EVM is discouraged on firm-fixed-price contracts and subcontracts of any dollar value. Further, performance-based acquisition management on developmental efforts, as described in OMB Circular A–11, Part 7, focuses on the use of EVM on cost and incentive type contracts.

3. *Comment:* One respondent expressed support of the rule, but urged that the Defense Acquisition Regulations Council work with the Civilian Agency Acquisition Council to ensure that the final FAR rule is consistent with the DFARS rule. In particular, the respondent stated that the FAR rule should be revised in four areas to make it consistent with the DFARS rule as follows: Explicitly limit application of EVM requirements to cost or incentive contracts; establish a fixed dollar value for the applicability of EVM requirements; limit integrated baseline reviews to contract post-award; and establish an executive agency (such as the Defense Contract Management Agency (DCMA)) within the Government responsible for Government-wide EVM system compliance reviews.

*DoD Response:* The respondent's recommendations regarding the FAR were addressed in the preamble to the FAR rule published at 71 FR 38238 on July 5, 2006. Additional changes have been made to the DFARS rule for consistency with the FAR rule. Those changes include:

○ Relocation of EVM policy from Part 242 to Part 234.

○ For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, replacement of the requirement for a contracting officer's formal validation and acceptance with the requirement for an EVM system that has been determined by the cognizant federal agency to be in compliance with the guidelines in ANSI/EIA-748. DCMA is assigned responsibility for determining EVM system compliance when DoD is the cognizant Federal agency.

○ Elimination of the text included in the proposed rule at 252.242-7006(b), which specified that the terms for compliance with ANSI/EIA-748 for contracts below \$50,000,000 may be subject to negotiation between the contractor and the contracting officer; compliance with the guidelines in ANSI/EIA-748 is not subject to negotiation.

○ Addition of text in the solicitation provision at 252.234-7001(a)(2)(ii) and (iii) to require an offeror proposing to use a system that has not been determined to be in compliance with ANSI/EIA-748, to provide information and assistance as required by the contracting officer to support review of the offeror's plan for compliance and to provide milestones that indicate when the offeror will be compliant.

○ Elimination of a separate provision and clause to address requirements for contracts valued at \$20,000,000 or more but less than \$50,000,000. The provision and clause at 252.234-7001 and 252.234-7002 address requirements for contracts above or below \$50,000,000.

4. *Comment:* One respondent recommended that the contract clause for EVM compliance be modified to indicate that the contract performance report may be tailored in accordance with the DoD Earned Value Management Implementation Guide, in order to reduce the burden on contractors while still ensuring that DoD managers receive useful information. The memorandum issued by the Under Secretary of Defense (Acquisition, Technology, and Logistics) on March 7, 2005, indicates that the contract performance report may be tailored, based on guidance in the implementation guide, for cost or incentive contracts valued at \$20 million or more but less than \$50 million.

*DoD Response:* DoD does not believe it is necessary to address tailoring of the contract performance report within the contract clause. The contracting officer may tailor the report in accordance with the DoD Earned Value Management

Implementation Guide. A reference to the guide has been added to the DFARS companion resource, Procedures, Guidance, and Information. Any tailoring of contract performance reports for a particular contract will be documented in the contract data requirements list to ensure the contractual requirements are clear.

5. *Comment:* One respondent recommended that language be added to the contract clause to state that the contractor is responsible for ensuring that selected subcontractors comply with ANSI/EIA-748.

*DoD Response:* Paragraph (h) of the contract clause in the final rule specifies that the contractor must require certain subcontractors (or subcontractor effort if subcontractors have not been selected) to comply with the EVM requirements of the clause. This includes compliance with the EVM guidelines in ANSI/EIA-748.

6. *Comment:* One respondent recommended adding the following language to the contract clause for consistency with language included in the solicitation provision: "The terms for compliance with ANSI/EIA-748 may be subject to negotiation between the contractor and subcontractor. The conduct of the integrated baseline reviews also may be subject to negotiation between the contractor and subcontractor."

*DoD Response:* The cited language has been excluded from the final rule. The clause at 252.234-7002 requires contractors to ensure subcontractor compliance with the EVM requirements of the clause, to include compliance with the guidelines in ANSI/EIA-748. Likewise, contractors are required to ensure that any necessary participation by a subcontractor in the performance of integrated baseline reviews is in accordance with the clause. However, since integrated baseline reviews are a joint assessment between the contractor and the Government, the timing of such reviews will necessarily be coordinated between the parties.

7. *Comment:* One respondent indicated that emphasis should be placed on establishing a system that requires a company-wide commitment to standardized actual collection systems, budgeting systems, scheduling systems, status systems, change management systems, and reporting systems, rather than simply emphasizing what threshold should be used to apply EVM.

*DoD Response:* The Government can not mandate contractor management and budgetary control systems used outside of Government contracts. However, contractors that are frequently

awarded Government contracts that require EVM may find it in their best interests to establish company-wide standardized EVM systems that are in compliance with ANSI/EIA-748.

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

## B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule amends the DFARS to update requirements for DoD contractors to establish and maintain earned value management systems. The rule revises the dollar thresholds at which DoD applies earned value management policy, and eliminates requirements for DoD contractors to submit cost/schedule status reports.

The rule supplements the FAR rule published at 71 FR 38238 on July 5, 2006. The FAR rule provides standard earned value management policy, consistent with the requirements of OMB Circular A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, and the supplement to Part 7, the Capital Programming Guide. The OMB Circular and its supplement implement statutory requirements for the Government to define the cost, performance, and schedule, and schedule goals for major acquisitions and to achieve, on the average, 90 percent of the established goals.

The FAR rule permits agency supplementation with regard to earned value management applicability criteria, post-award review requirements, and procedures for implementation of the guidelines in American National Standards Institute/Electronic Industries Alliance Standard 748 (ANSI/EIA-748), Earned Value Management Systems. This DFARS rule establishes the DoD-specific earned value management requirements.

The FAR rule permits agency supplementation with regard to earned value management applicability criteria, post-award review requirements, and procedures for implementation of the guidelines in American National Standards Institute/Electronic Industries Alliance Standard 748 (ANSI/EIA-748), Earned Value Management Systems. This DFARS rule establishes the DoD-specific earned value management requirements.

The threshold at which a DoD contractor previously was required to

have an earned value management system that complied with ANSI/EIA-748 was \$73 million for contracts and subcontracts funded with research, development, test and evaluation funding; and \$315 million for contracts and subcontracts funded with operation and maintenance or procurement funding. This DFARS rule lowers those thresholds to a single \$20 million for all cost or incentive contracts and subcontracts, regardless of funding type, and establishes a new threshold of \$50 million for an earned value management system that has been determined by the Government to be in compliance with ANSI/EIA-748. The rule discourages the application of earned value management requirements to fixed-price contracts and subcontracts of any dollar value.

During fiscal year 2006, DoD awarded 8,266 cost or incentive contracts to small business concerns, with only 16 of those contracts exceeding \$20 million in value. During the same fiscal year, DoD awarded 53,585 fixed-price type contracts to small business concerns, with only 70 of those contracts exceeding \$20 million in value. The use of earned value management requirements in fixed-price contracts is expected to be rare.

The DFARS rule mitigates the impact on small businesses by establishing a \$20 million contract threshold for earned value management requirements, and discouraging the application of earned value management requirements to fixed-price contracts and subcontracts, thereby establishing a very small subset of the small business community for which the rule would be applicable. The cost for a small business concern to establish a compliant earned value management system would be a one-time cost that the concern may offset through cost reimbursement on the resulting Government contract.

### C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The contract performance reports required by the rule are approved under OMB Clearance Number 0704-0188, Acquisition Management Systems and Data Requirements Control List.

### List of Subjects in 48 CFR Parts 234, 242, and 252

Government procurement.

#### Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 234, 242, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 234, 242, and 252 continues to read as follows:

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

### PART 234—MAJOR SYSTEM ACQUISITION

#### § 234.005 [Removed]

■ 2. Section 234.005 is removed.

■ 3. Subpart 234.2 is added to read as follows:

#### Subpart 234.2—Earned Value Management System

Sec.

234.201 Policy.

234.203 Solicitation provisions and contract clause.

#### Subpart 234.2—Earned Value Management System

##### § 234.201 Policy.

(1) DoD applies the earned value management system requirement as follows:

(i) For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the earned value management system shall comply with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748).

(ii) For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the contractor shall have an earned value management system that has been determined by the cognizant Federal agency to be in compliance with the guidelines in ANSI/EIA-748.

(iii) For cost or incentive contracts and subcontracts valued at less than \$20,000,000—

(A) The application of earned value management is optional and is a risk-based decision;

(B) A decision to apply earned value management shall be documented in the contract file; and

(C) Follow the procedures at PGI 234.201(1)(iii) for conducting a cost-benefit analysis.

(iv) For firm-fixed-price contracts and subcontracts of any dollar value—

(A) The application of earned value management is discouraged; and

(B) Follow the procedures at PGI 234.201(1)(iv) for obtaining a waiver

before applying earned value management.

(2) When an offeror proposes a plan for compliance with the earned value management system guidelines in ANSI/EIA-748, follow the review procedures at PGI 234.201(2).

(3) The Defense Contract Management Agency is responsible for determining earned value management system compliance when DoD is the cognizant Federal agency.

(4) See PGI 234.201(4) for additional guidance on earned value management.

### 234.203 Solicitation provisions and contract clause.

For cost or incentive contracts valued at \$20,000,000 or more, and for other contracts for which EVMS will be applied in accordance with 234.201(1)(iii) and (iv)—

(1) Use the provision at 252.234-7001, Notice of Earned Value Management System, instead of the provisions at FAR 52.234-2, Notice of Earned Value Management System—Pre-Award IBR, and FAR 52.234-3, Notice of Earned Value Management System—Post-Award IBR, in the solicitation; and

(2) Use the clause at 252.234-7002, Earned Value Management System, instead of the clause at FAR 52.234-4, Earned Value Management System, in the solicitation and contract.

### PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 4. Section 242.1106 is amended by revising paragraph (a) to read as follows:

#### 242.1106 Reporting requirements.

(a) See DoDI 5000.2, Operation of the Defense Acquisition System, for reporting requirements for defense technology projects and acquisition programs.

\* \* \* \* \*

#### 242.1107-70 [Removed]

■ 5. Section 242.1107-70 is removed.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Sections 252.234-7001 and 252.234-7002 are added to read as follows:

#### 252.234-7001 Notice of Earned Value Management System.

As prescribed in 234.203(1), use the following provision:

#### Notice of Earned Value Management System (Apr 2008)

(a) If the offeror submits a proposal in the amount of \$50,000,000 or more—

(1) The offeror shall provide documentation that the Cognizant Federal Agency (CFA) has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748) (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.

(2) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in ANSI/EIA-748.

(i) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract, and how the proposed EVMS complies with the EVMS guidelines in ANSI/EIA-748;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(C) Describe the management system and its application in terms of the EVMS guidelines;

(D) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors; and

(E) Describe the process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(ii) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(iii) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the guidelines in ANSI/EIA-748.

(b) If the offeror submits a proposal in an amount less than \$50,000,000—

(1) The offeror shall submit a written description of the management procedures it will use and maintain in the performance of any resultant contract to comply with the requirements of the Earned Value Management System clause of the contract. The description shall include—

(i) A matrix that correlates each guideline in ANSI/EIA-748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures; and

(ii) The process the offeror will use to determine subcontractor compliance with ANSI/EIA-748.

(2) If the offeror proposes to use an EVMS that has been determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748, the offeror may submit a copy of the documentation of such determination instead of the written description required by paragraph (b)(1) of this provision.

(c) The offeror shall identify the subcontractors (or the subcontracted effort if subcontractors have not been selected) to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted

effort selected for application of the EVMS requirements. The offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System clause of the contract.

(End of provision)

#### **252.234-7002 Earned Value Management System.**

As prescribed in 234.203(2), use the following clause:

#### **Earned Value Management System (Apr 2008)**

(a) In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and

(2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

(b) If this contract has a value of \$50,000,000 or more, the Contractor shall use an EVMS that has been determined by the Cognizant Federal Agency (CFA) to be in compliance with the EVMS guidelines as stated in paragraph (a)(1) of this clause. If, at the time of award, the Contractor's EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (a)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(c) If this contract has a value of less than \$50,000,000, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Government will allow the use of a Contractor's EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748.

(d) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of \$50,000,000 or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(e) The Government will schedule integrated baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after (1) contract award, (2) the exercise of significant contract options, and (3) the incorporation of major modifications. During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (a) of this clause.

(g) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(h) The Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts valued at \$50,000,000 or more, the following subcontractors shall comply with the requirements of this clause:

*[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]*

(2) For subcontracts valued at less than \$50,000,000, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (b) of this clause:

*[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]*

(End of clause)

#### **252.242-7001 and 252.242-7002 [Removed and Reserved]**

■ 7. Sections 252.242-7001 and 252.242-7002 are removed and reserved.

**252.242–7005 and 252.242–7006**  
[Removed]

■ 8. Sections 252.242–7005 and 252.242–7006 are removed.

[FR Doc. E8–8706 Filed 4–22–08; 8:45 am]

BILLING CODE 5001–08–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 071106673–8011–02]

RIN 0648–XH33

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

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

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2008 total allowable catch (TAC) of Pacific ocean perch in this area specified for vessels participating in the BSAI trawl limited access fishery.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 18, 2008, through 2400 hrs, A.l.t., December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., May 5, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by “RIN 0648–XH33,” by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557; or

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI on March 19, 2008 (73 FR 15458, March 24, 2008).

NMFS has determined that approximately 59 mt of the 2008 TAC of Pacific ocean perch for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2008 TAC of Pacific ocean perch in this area specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District of the BSAI. The opening is effective 1200 hrs, A.l.t., April 18, 2008, through 2400 hours, December 31, 2008.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Pacific ocean perch fishery in the Eastern Aleutian District of the BSAI for vessels participating in the BSAI trawl limited access fishery. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 17, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the Pacific ocean perch fishery in the Eastern Aleutian District of the BSAI for vessels participating in the BSAI trawl limited access fishery to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 5, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: April 17, 2008.

**William D. Chappell**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 08–1173 Filed 4–18–08; 1:37 pm]

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