

admitted to the United States. CDC inadvertently omitted an exception to the chest x-ray examination for aliens in the United States who apply for adjustment of status to permanent resident. CDC is publishing this correction to clarify that an alien of any age in the United States who applies for adjustment of status to permanent resident shall not be required to have a chest x-ray examination unless their tuberculin skin test, or an equivalent test that shows an immune response to *Mycobacterium tuberculosis*, is positive.

#### List of Subjects in 42 CFR Part 34

Aliens, Health care, Scope of examination, Passports and visas, Public health.

■ Accordingly, 42 CFR part 34 is corrected by making the following correcting amendments:

#### PART 34—MEDICAL EXAMINATION OF ALIENS

■ 1. The authority citation for part 34 continues to read as follows:

**Authority:** 42 U.S.C. 252; 8 U.S.C. 1182 and 1222.

■ 2. Amend § 34.3 by revising paragraph (e)(2)(iv) to read as follows:

##### § 34.3 Scope of examinations.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(iv) *Exceptions.* Serologic testing for syphilis and HIV shall not be required if the alien is under the age of 15, unless there is a reason to suspect infection with syphilis or HIV. An alien, regardless of age, in the United States who applies for adjustment of status to lawful permanent resident shall not be required to have a chest x-ray examination unless their tuberculin skin test, or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, is positive. HHS/CDC may authorize exceptions to the requirement for a tuberculin skin test, an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, or chest X-ray examination for good cause, upon application approved by the Director.

\* \* \* \* \*

Dated: October 14, 2008.

**Ann C. Agnew,**

*Executive Secretary, Department of Health and Human Services.*

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#### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Parts 215 and 252

RIN 0750-AF40

#### Defense Federal Acquisition Regulation Supplement; Evaluation Factor for Use of Members of the Selected Reserve (DFARS Case 2006-D014)

**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 implement Section 819 of the National Defense Authorization Act for Fiscal Year 2006. Section 819 authorizes DoD to use an evaluation factor that considers whether an offeror intends to perform a contract using employees or individual subcontractors who are members of the Selected Reserve.

**DATES:** *Effective Date:* October 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2006-D014.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule implements Section 819 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163). Section 819 authorizes DoD to use an evaluation factor that considers whether an offeror intends to perform a contract using employees or individual subcontractors who are members of the Selected Reserve, and requires offerors to submit documentation supporting any stated intent to use such employees or subcontractors. The rule contains a solicitation provision and a contract clause addressing the evaluation factor and the obligations of a contractor awarded a contract based on the evaluation factor.

DoD published a proposed rule at 72 FR 51209 on September 6, 2007. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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 certifies that this final rule will not 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 use of the evaluation factor is discretionary and is not expected to affect a significant number of acquisitions.

#### C. Paperwork Reduction Act

This final rule contains a new information collection requirement. The Office of Management and Budget has approved the information collection under Control Number 0704-0446.

#### List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

**Michele P. Peterson**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Parts 215 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 215 and 252 continues to read as follows:

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

#### PART 215—CONTRACTING BY NEGOTIATION

■ 2. Sections 215.370 through 215.370-3 are added to read as follows:

##### 215.370 Evaluation factor for employing or subcontracting with members of the Selected Reserve.

##### 215.370-1 Definition.

*Selected Reserve*, as used in this section, is defined in the provision at 252.215-7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve.

##### 215.370-2 Evaluation factor.

In accordance with Section 819 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), the contracting officer may use an evaluation factor that considers whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve. See PGI 215.370-2 for guidance on use of this evaluation factor.

##### 215.370-3 Solicitation provision and contract clause.

(a) Use the provision at 252.215-7005, Evaluation Factor for Employing or Subcontracting with Members of the

Selected Reserve, in solicitations that include an evaluation factor considering whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve.

(b) Use the clause at 252.215-7006, Use of Employees or Individual Subcontractors Who are Members of the Selected Reserve, in solicitations that include the provision at 252.215-7005. Include the clause in the resultant contract only if the contractor stated in its proposal that it intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve, and that statement was used as an evaluation factor in the award decision.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Sections 252.215-7005 and 252.215-7006 are added to read as follows:

### 252.215-7005 Evaluation Factor for Employing or Subcontracting With Members of the Selected Reserve.

As prescribed in 215.370-3(a), use the following provision:

#### Evaluation Factor for Employing or Subcontracting With Members of the Selected Reserve (Oct 2008)

(a) *Definition. Selected Reserve*, as used in this provision, has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

(b) This solicitation includes an evaluation factor that considers the offeror's intended use of employees, or individual subcontractors, who are members of the Selected Reserve.

(c) If the offeror, in the performance of any contract resulting from this solicitation, intends to use employees or individual subcontractors who are members of the Selected Reserve, the offeror's proposal shall include documentation to support this intent. Such documentation may include, but is not limited to—

(1) Existing company documentation, such as payroll or personnel records, indicating the names of the Selected Reserve members who are currently employed by the company; or

(2) A statement that one or more positions will be set aside to be filled by new hires of Selected Reserve members, along with verifying documentation.

(End of provision)

### 252.215-7006 Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve.

As prescribed in 215.370-3(b), use the following clause:

### Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve (Oct 2008)

(a) *Definition. Selected Reserve*, as used in this clause, has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

(b) If the Contractor stated in its offer that it intends to use members of the Selected Reserve in the performance of this contract—

(1) The Contractor shall use employees, or individual subcontractors, who are members of the Selected Reserve in the performance of the contract to the fullest extent consistent with efficient contract performance; and

(2) The Government has the right to terminate the contract for default if the Contractor willfully or intentionally fails to use members of the Selected Reserve, as employees or individual subcontractors, in the performance of the contract.

(End of clause)

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 071106671-8010-02]

RIN 0648-XL33

### Fisheries of the Exclusive Economic Zone Off Alaska; Hook-and-Line Gear in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for demersal shelf rockfish in the Southeast Outside District or sablefish in the GOA. This action is necessary to prevent exceeding the 2008 Pacific halibut prohibited species catch (PSC) limit specified for vessels using hook-and-line gear targeting groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish in the GOA. **DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 16, 2008, through 2400 hrs, A.l.t., December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone

according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

The 2008 Pacific halibut PSC limit allocated to vessels using hook-and-line gear targeting groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish in the GOA was established as 290 metric tons by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.21(d)(7)(ii), the Regional Administrator has determined that the 2008 Pacific halibut PSC limit allocated to vessels using hook-and-line gear targeting groundfish other than demersal shelf rockfish in the Southeast Outside District or sablefish in the GOA will soon be reached. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for demersal shelf rockfish in the Southeast Outside District or sablefish in the GOA.

After the effective date of this closure, the maximum retainable amounts at 50 CFR 679.20(e) and (f) apply at any time during a trip for vessels fishing for demersal shelf rockfish in the Southeast Outside District or sablefish in the GOA.

#### 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)(3) 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 closing directed fishing for groundfish by vessels using hook-and-line gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 14, 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