

temporary protected status on or before June 30, 1992.

Dated: January 29, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 720

Delivery of Servicemembers, Civilians, and Dependents; Service of Process and Subpoenas

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth amended guidelines and procedures for the delivery of personnel to civilian authorities, service of process, and subpoenas. This rule reflects changes to chapter VI of the Manual of the Judge Advocate General, JAG Instruction 5800.7C.

EFFECTIVE DATE: February 13, 1992.

FOR FURTHER INFORMATION CONTACT: LT Alicia Connolly, JAGC, U.S. Naval Reserve, General Litigation Division (Code 34), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400, (703) 325-9870.

SUPPLEMENTARY INFORMATION: Pursuant to the authority conferred under 5 U.S.C. 301; 10 U.S.C. 133, 939, 5013, and 5148; E.O. 11476; and 32 CFR 700.206 and 700.1201; the Judge Advocate General revises 32 CFR part 720. This revision reflects the redesignation of former chapter XIII as the new chapter VI of the Manual of the Judge Advocate General of the Navy, JAG Instruction 5800.7C. This part has been revised to reflect changes effected by the new chapter VI. It provides direction and guidance for various situations where a military commander is asked to provide or, at a minimum, permit the taking of personnel, property, or records from a military installation by civilian authorities.

This revision was adopted on October 3, 1990. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been determined that such requirements relate entirely to internal Naval management and personnel practices that can be administered more effectively without public participation in the rule-making

process. It has therefore been determined that invitation of public comment on this revision would be impracticable and unnecessary and is therefore not required under the provisions of 32 CFR parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in Executive Order 12291, and does not have substantial impact on the public.

Lists of Subjects in 32 CFR Part 720

Service of process, Personnel.

For the reasons set out in the preamble, title 32, part 720 of the Code of Federal Regulations is amended as follows:

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

1. The authority citation for 32 CFR part 720 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

2. Subparts A and B are revised to read as follows:

Subpart A—Delivery of Personnel

Sec.

- 720.1 Delivery of persons requested by state authorities in criminal cases.
- 720.2 Delivery when persons are within territorial limits of the requesting State.
- 720.3 Delivery when persons are beyond territorial limits of the requesting state.
- 720.4 Persons stationed outside the United States.
- 720.5 Authority of the Judge Advocate General and the General Counsel.
- 720.6 Agreement required prior to delivery to state authorities.
- 720.7 Delivery of persons to federal authorities.
- 720.8 Delivery of persons to foreign authorities.
- 720.9 Circumstances in which delivery is refused.
- 720.10 Members released by civil authorities on bail or on their own recognizance.
- 720.11 Interviewing servicemembers or civilian employees by federal civilian investigative agencies.
- 720.12 Request for delivery of members serving sentence of court-martial.
- 720.13 Request for delivery of members serving sentence of a state court.
- 720.14-720.19 [Reserved]

Subpart B—Service of Process and Subpoenas Upon Personnel

- 720.20 Service of process upon personnel.
- 720.21 Members or civilian employees subpoenaed as witnesses in state courts.
- 720.22 Members or civilian employees subpoenaed as witnesses in federal courts.
- 720.23 Naval prisoners as witnesses or parties in civilian courts.

720.24 Interviews and depositions in connection with civil litigation in matters pertaining to official duties.

720.25 Repossession of personal property.

720.26-720.29 [Reserved]

Subpart A—Delivery of Personnel

§ 720.1 Delivery of persons requested by state authorities in criminal cases.

Subpart A of this part deals with requests by State authorities for the surrender of members or civilians pursuant to arrest warrants or similar process, generally in connection with a criminal prosecution. Responding to such requests by a State for delivery of members or civilian employees involves balancing the Federal interest in preserving sovereign immunity and the productivity, peace, good order, and discipline of the installation against the right of the State to exercise its jurisdiction. Additionally, by regulation, naval and Marine authorities are limited in the extent to which they can directly assist such an act. Commands should respond to such requests as set out below, generally using the minimum authority necessary to preserve the Federal interests without unduly restricting State jurisdiction.

§ 720.2 Delivery when persons are within the territorial limits of the requesting state.

When the delivery of any member or civilian is requested by local civil authorities of a State for an offense punishable under the laws of that jurisdiction, and such person is located at a Navy or Marine Corps installation within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is issued. In the case of a member, delivery will only be effected upon compliance with § 720.6, subject to the exceptions in § 720.9. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected. The rule discussed above applies equally to civilian employees and civilian contractors and their employees when located on a Navy or Marine Corps installation, except that compliance with § 720.6 and consideration of § 720.9 are not required (for purposes of this part, "State" includes the District of Columbia, territories, commonwealths, and all possessions or protectorates of the United States). Commands should normally not become actively involved in civilian law enforcement. When a command has determined that a person is to be delivered in response to a valid

warrant, the following guidance should be considered. If the person to be delivered is a military member, the member may be ordered to report to a location designated by the commanding officer and surrendered to civil authorities under Article 14, UCMJ (10 U.S.C. 814). If the person to be delivered is a civilian, the person may be invited to report to the designated space for delivery. If the civilian refuses, the civilian authorities may be escorted to a place where the civilian is located in order that delivery may be effected. A civilian may be directed to leave a classified area. All should be done with minimum interference to good order and discipline.

§ 720.3 Delivery when persons are beyond territorial limits of the requesting state.

(a) *General.* When State civil authorities request delivery of any member of the Navy or Marine Corps for an alleged crime or offense punishable under the law of the jurisdiction making the request, and such member is not attached to a Navy or Marine Corps activity within the requesting State or a ship within the territorial waters thereof, the following action will be taken. Any officer exercising general court-martial jurisdiction, or officer designated by him, or any commanding officer, after consultation with a judge advocate of the Navy or Marine Corps, is authorized (upon compliance with the provisions of this section and § 720.6, and subject to the exceptions in § 720.9) to deliver such member to make the member amenable to prosecution. The member may be delivered upon formal or informal waiver of extradition in accordance with § 720.3(b), or upon presentation of a fugitive warrant, in which case the procedures of § 720.3(c) apply. The rule discussed above applies equally to civilian employees and civilian contractors and their employees when located on a Department of the Navy installation not within the requesting State, except that compliance with § 720.6 and consideration of § 720.9 are not required.

(b) *Waiver of extradition.* (1) Any member may waive formal extradition. A waiver must be in writing and be witnessed. It must include a statement that the member signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply

with the procedures set forth in § 720.3(c).

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.

(4) When a member declines to waive extradition, the nearest Naval Legal Service Office or Marine Corps staff judge advocate shall be informed and shall confer with the civil authorities as appropriate. The member concerned shall not be transferred or ordered out of the State in which he is then located without the permission of the Secretary of the Navy (Judge Advocate General), unless a fugitive warrant is obtained as set forth in § 720.3(c).

(c) *Fugitive warrants.* (1) A fugitive warrant, as used in this chapter, is a warrant issued by a State court of competent jurisdiction for the arrest of a member. Normally, a State requesting delivery of a member from another State will issue a fugitive warrant to the State where the member is then located.

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the member is located, the latter State will normally request delivery of the member to local State authorities. Delivery to local State authorities should be arranged by Navy or Marine Corps officers designated in § 720.3(a), upon compliance with the provisions of § 720.6, and subject to the conditions of §§ 720.9 and 720.3(c) (3) and (4).

(3) Upon receipt of a request for delivery of a member under fugitive warrant to State authorities, if the member voluntarily waives extradition, the provisions of § 720.3(b) apply. If the member is delivered to local authorities but refuses to waive extradition in the courts of the State in which he is located.

(4) No delivery of a member by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by § 720.6 and execution of such agreement either:

(i) By authorities of both the requesting State and the State in which the member is located, or

(ii) By authorities of the State in which the member is located if such authorities, on behalf of the requesting State, accept the full responsibility for returning the member to a command designated by the Department of the Navy.

(d) *Members stationed outside the United States.* When the member sought by State authorities is not located within the United States, see § 720.4.

§ 720.4 Persons stationed outside the United States.

(a) *Persons desired by local U.S. authorities.* When delivery of any member in the Navy or Marine Corps, or any civilian employee or dependent, is desired for trial by state authorities and the individual whose presence is sought is stationed outside the United States, the provisions of subpart D of this part will be followed. In all such cases, the nearest judge advocate of the Navy or Marine Corps shall be consulted before any action is taken.

(b) *Members desired by U.S. Federal authorities.* When delivery of any member of the Navy or Marine Corps is desired for trial in a Federal district court, upon appropriate representation by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the member will be returned to the United States at the expense of the Department of the Navy and held at a military facility convenient to the Department of the Navy and to the Department of Justice. Delivery may be accomplished as set forth in § 720.7, subject to the exceptions in § 720.9.

§ 720.5 Authority of the Judge Advocate General and the General Counsel.

(a) *Authority of the Judge Advocate General.* The Judge Advocate General, the Deputy Judge Advocate General, and the Assistant Judge Advocates General are authorized to act for the Secretary of the Navy in performance of functions under this chapter.

(b) *Authority of the General Counsel.* The authority of the General Counsel of the Navy is prescribed by Navy Regulation (32 CFR 700.203 (a) and (g)) and by appropriate departmental directives and instructions (e.g., SECNAVINST 5430.25D).¹ The principal areas of responsibility of the Office of the General Counsel (OGC) are commercial law, including maritime contract matters; civilian employee law; real property law; and Freedom of Information Act and Privacy Act matters as delineated in 32 CFR part 701. The Office of the General Counsel shares responsibility with the Judge Advocate General for environmental law cases.

(c) *Points of contact.* Commanding officers are advised to contact their local area judge advocates for assistance in referring matters to the appropriate office of the Judge Advocate General or General Counsel.

¹ Copies may be obtained if needed, from the Commanding Officer, Naval Publication and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

(d) *Coordination with the Commandant of the Marine Corps.* Marine Corps commands shall inform the Commandant of the Marine Corps (CMC) of all matters referred to the Judge Advocate General or the Office of General Counsel. Copies of all correspondence and documents shall also be provided to CMC. The Staff Judge Advocate to the Commandant (CMC (JAR)) shall be advised of all matters referred to the Judge Advocate General. Counsel to the Commandant shall be advised of matters referred to the Office of General Counsel.

§ 720.6 Agreement required prior to delivery to state authorities.

(a) *Delivery under Article 14, UCMJ.* When delivery of any member of the Navy or Marine Corps to the civilian authorities of a State is authorized, the member's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement. The State official completing the agreement must show that he is authorized to bind the State to the terms of the agreement. When indicating in the agreement the naval or Marine Corps activity to which the member delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which the member is attached) that possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when:

(1) The member is furnished transportation (under escort in cases of delivery in accordance with § 720.12) to a naval or Marine Corps activity as set forth in the agreement;

(2) The member is provided cash to cover incidental expenses en route thereto; and

(3) The Department of the Navy is so informed.

As soon as practicable, a copy of the delivery agreement shall be forwarded to the Judge Advocate General.

(b) *Delivery under Interstate Agreement on Detainers Act.* Special forms are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to Article 14, UCMJ. See § 720.12 for a detailed discussion of the Detainers Act.

§ 720.7 Delivery of persons to Federal authorities.

(a) *Authority to deliver.* When Federal law enforcement authorities display proper credentials and Federal warrants

for the arrest of members, civilian employees, civilian contractors and their employees, or dependents residing at or located on a Department of the Navy installation, commanding officers are authorized to and should allow the arrest of the individual sought. The exceptions in § 720.9 may be applied to members. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected.

(b) *Agreement not required of Federal authorities.* The agreement described in § 720.6 is not a condition to the delivery of members to Federal law enforcement authorities. Regardless of whether the member is convicted or acquitted, after final disposition of the case, the member will be returned to the Naval Service (provided that naval authorities desire his return) and the necessary expenses will be paid from an appropriation under the control of the Department of Justice.

§ 720.8 Delivery of persons to foreign authorities.

Except when provided by agreement between the United States and the foreign government concerned, commanding officers are not authorized to deliver members or civilian employees of the Department of the Navy, or their dependents residing at or located on a naval or Marine Corps installation, to foreign authorities. When a request for delivery of these persons is received in a country with which the United States has no agreement or when the commanding officer is in doubt, advice should be sought from the Judge Advocate General. Detailed information concerning the delivery of members, civilian employees, and dependents to foreign authorities when a status of forces agreement is in effect is contained in DoD Directive 5525.1 of 9 April 1985 and SECNAVINST 5820.4F.²

§ 720.9 Circumstances in which delivery is refused.

(a) *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending, commanding officers should obtain legal guidance from a judge advocate of the Navy or Marine Corps prior to delivery of members to Federal or State authorities.

(b) *When delivery may be refused.* Delivery may be refused only in the following limited circumstances:

(1) Where the accused has been retained for prosecution; or

(2) When the commanding officer determines that extraordinary

circumstances exist which indicate that delivery should be refused.

(c) *Delivery under Detainers Act.* When the accused is undergoing sentence of a court-martial, see § 720.12.

(d) *Reports required.* When delivery will be refused, the commanding officer shall report the circumstances to the Judge Advocate General by telephone, or by message if telephone is impractical. The initial report shall be confirmed by letter setting forth a full statement of the facts. A copy of the report shall be forwarded to the regional coordinator.

§ 720.10 Members released by civil authorities on bail or on their own recognizance.

A member of the Navy or Marine Corps arrested by Federal or State authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, when a member of the Navy or Marine Corps is arrested by Federal or State authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer, upon verification of the attesting facts, date of trial, and approximate length of time that should be covered by the absence, shall grant liberty or leave to permit appearance for trial, unless this would have a serious negative impact on the command. In the event that liberty or leave is not granted, a judge advocate of the Navy or Marine Corps should immediately be requested to act as liaison with the court. Nothing in this section is to be construed as permitting the member arrested and released to avoid the obligations of bond or recognizance by reason of the member's being in the military service.

§ 720.11 Interviewing servicemembers or civilian employees by federal civilian investigative agencies.

Requests by the Federal Bureau of Investigation, Naval Investigative Service Command, or other Federal civilian investigative agencies to interview members or civilian employees of the Department of the Navy suspected or accused of crimes should be promptly honored. Any refusal of such a request shall be immediately reported to the Judge Advocate General, or the Office of General Counsel, as appropriate, by telephone, or by message if telephone is impractical. When the employee in question is a member of an exclusive bargaining unit, a staff judge advocate or General Counsel attorney will be consulted to determine whether the employee has a right to have a

² See footnote 1 of § 720.5(b).

bargaining unit representative present during the interview.

§ 720.12 Request for delivery of members serving sentence of court-martial.

(a) *General.* Article 14, UCMJ (10 U.S.C. 814), provides authority to honor requests for delivery of members serving a sentence of a court-martial. Although seldom utilized, additional authority and mandatory obligation to deliver such members are provided by the Interstate Agreement on Detainers Act (18 U.S.C. app. 9, hereinafter "the Act"), which applies to the Federal agency holding the prisoner. The Department of the Navy, as an agency of the Federal Government, shall comply with the Act. The Act is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The Act provides a way for a prisoner to be tried on charges pending before State courts, either at the request of the State where the charges are pending or the prisoner's request. When refusal of delivery under Article 14, UCMJ, is intended, comply with § 720.9(d).

(b) *Interstate Agreement on Detainers Act.* Upon request under the Act by either State authorities or the prisoner, the cognizant Navy or Marine Corps staff judge advocate, as appropriate, shall communicate with the appropriate State officials, and monitor and ensure that the cognizant commander acts on all such requests. The Act provides that court-martial sentences continue to run during temporary custody. This section does not cover requests between Federal authorities. The procedure set forth in § 720.12(c) shall be applied in such cases.

(1) *State request.* State officials may request delivery of prisoners in military custody under section 2, Article IV, of the Act. Where a detainer has been lodged against the prisoner, and the prisoner is serving a sentence (regardless of whether an appeal is in process), delivery is mandatory unless the request is disapproved by the Director of the Bureau of Prisons, Washington, DC, 20537 as the designee of the Attorney General for this purpose. 28 CFR 0.96(n). There has been no further delegation to military authority. The prisoner should be informed that he may request the Director of the Bureau of Prisons, Washington, DC 20537, within 30 days after such request is received, to deny the request. Upon the expiration of such 30-day period or upon the Director of the Bureau of Prisons' denial of the prisoner's request, whichever occurs first, the prisoner shall be delivered to the requesting authority.

(2) *Prisoner request.* The obligation to grant temporary custody under the Act also applies to prisoners' requests to be delivered to State authority. Section 2, Article III(c) of the Act requires the custodial official to inform the prisoner of the existence of any detainer and of the prisoner's right to request disposition. The prisoner's request is directed to the custodial official who must forward it to the appropriate prosecuting official and court, with a certificate of prisoner status as provided by Article III of the Act.

(c) *Article 14, UCMJ.* When a request for custody does not invoke the Interstate Agreement on Detainers Act, delivery of custody shall be governed by Article 14, UCMJ, and §§ 720.2 through 720.9. The request shall be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody, e.g., additional courts-martial are to be convened or the delivery would severely prejudice the prisoner's appellate rights. Execution of the agreement discussed in § 720.6 is a condition precedent to delivery to State authorities. It is not required before delivery to Federal authorities. See § 720.7. Unlike delivery under the Act, delivery of custody pursuant to Article 14, UCMJ, interrupts execution of the court-martial sentence.

§ 720.13 Request for delivery of members serving sentence of a state court.

(a) *General.* Ordinarily, members serving protracted sentences resulting from a State criminal conviction will be processed for administrative discharge by reason of misconduct. It may, however, be in the best interest of the Naval Service to retain a member charged with a serious offense, subject to military jurisdiction, to try the member by court-martial. The Navy may obtain temporary custody of incarcerated members for prosecution with a request to the State under the Interstate Agreement on Detainers Act. 18 U.S.C. app. 9. The Department of the Navy may use the Act in the same manner in which State authorities may request members pursuant to § 720.12.

(b) *Interstate Agreement on Detainers Act.* Military authorities may use the Act to obtain temporary custody of a member incarcerated in a State institution, pursuant to conviction by a State court, to resolve criminal charges against the member before a court-martial.

(1) *Detainer.* If a command requests temporary custody under the Act, the commanding officer of the cognizant naval legal service office or the Marine Corps staff judge advocate, shall file a

detainer with the warden, commissioner of corrections, or other State official having custody of the member. The detainer shall identify the member with particularity, enumerate the military charges pending, and request the command be notified in advance of any intention to release the member from confinement.

(2) *Request for delivery.* As soon as practical after filing the detainer, the commanding officer of the cognizant naval legal service office or the Marine Corps staff judge advocate, shall prepare a written request for temporary custody of the member addressed to the State official charged with administration of the State penal system. The request shall designate the person(s) to whom the member is to be delivered and shall be transmitted via the military judge to whom the member's case has been assigned. If the request is properly prepared, the military judge shall approve, record, and transmit the request to the addressee official. The Act provides the State with a 30-day period after receipt of the request before the request is to be honored. Within that period of time, the governor of the State may disapprove the request, either unilaterally or upon the prisoner's request. If the governor disapproves the request, the command should coordinate any further action with the Judge Advocate General.

(3) *Responsibilities.* The cognizant command shall ensure that the responsibilities of a receiving jurisdiction, delineated in section 2, Article IV of the Act, are discharged. In particular, the Act requires that the receiving jurisdiction:

(i) Commence the prisoner's trial within 120 days of the prisoner's arrival, unless the court, for good cause shown during an Article 39(a), UCMJ, session, grants a continuance necessary or reasonable to promote the ends of justice;

(ii) Hold the prisoner in a suitable jail or other facility regularly used for persons awaiting prosecution, except for periods during which the prisoner attends court or travels to or from any place at which his presence may be required;

(iii) Return the prisoner to the sending jurisdiction at the earliest practical time, but not before the charges that underlie the request have been resolved (prematurely returning the prisoner will result in dismissal of the charges); and

(iv) Pay all costs of transporting, caring for, keeping, and returning the prisoner to the sending jurisdiction, unless the command and the State agree

on some other allocation of the costs or responsibilities.

§ 720.14-720.19 [Reserved]

Subpart B—Service of Process and Subpoenas Upon Personnel

§ 720.20 Service of process upon personnel.

(a) *General.* Commanding officers afloat and ashore may permit service of process of Federal or State courts upon members, civilian employees, dependents, or contractors residing at or located on a naval installation, if located within their commands. Service will not be made within the command without the commanding officer's consent. The intent of this provision is to protect against interference with mission accomplishment and to preserve good order and discipline, while not unnecessarily impeding the court's work. Where practical, the commanding officer shall require that the process be served in his presence, or in the presence of a designated officer. In all cases, individuals will be advised to seek legal counsel, either from a legal assistance attorney or from personal counsel for service in personal matters, and from Government counsel for service in official matters. The commanding officer is not required to act as a process server. The action required depends in part on the status of the individual requested and which State issued the process.

(1) *In-State process.* When a process server from a State or Federal court from the jurisdiction where the naval station is located requests permission to serve process aboard an installation, the command ordinarily should not prevent service of process so long as delivery is made in accordance with reasonable command regulations and is consistent with good order and discipline. Withholding service may be justified only in the rare case when the individual sought is located in an area under exclusive Federal jurisdiction not subject to any reservation by the State of the right to serve process. Questions on the extent of jurisdiction should be referred to the staff judge advocate, command counsel, or local naval legal service office. If service is permitted, an appropriate location should be designated (for example, the command legal office) where the process server and the member or employee can meet privately in order that process may be served away from the workplace. A member may be directed to report to the designated location. A civilian may be invited to the designated location. If the civilian does not cooperate, the process

server may be escorted to the location of the civilian in order that process may be served. A civilian may be required to leave a classified area in order that the process server may have access to the civilian. If unusual circumstances require that the command not permit service, see § 720.20(e).

(2) *Out-of-State process.* In those cases where the process is to be served by authority of a jurisdiction other than that where the command is located, the person named is not required to accept process. Accordingly, the process server from the out-of-State jurisdiction need not be brought face-to-face with the person named in the process. Rather, the process server should report to the designated command location while the person named is contacted, apprised of the situation, and advised that he may accept service, but also may refuse. In the event that the person named refuses service, the process server should be so notified. If service of process is attempted from out-of-State by mail and refused, the refusal should be noted and the documents returned to the sender. Questions should be referred to the staff judge advocate, command counsel, or the local naval legal service office.

(b) *Service of process arising from official duties.* (1) Whenever a member or civilian employee of the Department of the Navy is served with process because of his official position, the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate, shall be notified by telephone, or by message if telephone is impractical. Notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action.

(2) Any member or civilian employee served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of official duties shall immediately deliver all such process and pleadings to the commanding officer. The commanding officer shall ascertain the pertinent facts and notify the Judge Advocate General or Associate General Counsel (Litigation), as appropriate, by telephone or by message if telephone is impractical, of the service and immediately forward the pleadings and process to the relevant office. The member or civilian employee will be advised of the right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. 1442, 1442a, rights under the Federal Employees Liability Reform and Tort Compensation Act (28 U.S.C. 2679b), if

applicable, and the right of a Federal employee to request representation by Department of Justice attorneys in Federal (civil) or State (civil or criminal) proceedings and in congressional proceedings in which that person is sued in an individual capacity, as delineated in 28 CFR 50.15. Requests for representation shall be addressed to the Judge Advocate General or Associate General Counsel (Litigation), as appropriate, and shall be endorsed by the commanding officer, who shall provide all necessary data relating to the questions of whether the person was acting within the course of official duty or scope of employment at the time of the incident out of which the suit arose.

(3) If the service of process involves a potential claim against the Government, see 32 CFR 750.12(a), 750.12(b), and 750.24. The right to remove to Federal Court under 28 U.S.C. 1442 and 1442a must be considered where the outcome of the State court action may influence a claim or potential claim against the United States. Questions should be directed to the Judge Advocate General or the Associate General Counsel (Litigation).

(c) *Service of process of foreign courts.* (1) Usually, the amenability of members, civilian employees, and their dependents stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned (for example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846). When service of process on a person described above is attempted within the command in a country in which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate. When service of process is upon the United States Government or one of its agencies or instrumentalities as the named defendant, the doctrine of sovereign immunity may allow the service of process to be returned to the court through diplomatic channels. Service of process directed to an official of the United States, on the other hand, must always be processed in accordance with the applicable international agreement or treaty, regardless of whether the suit involves acts performed in the course of official duties. The Judge Advocate General or the Associate General Counsel (Litigation), as appropriate, will arrange

through the Department of Justice for defense of the suit against the United States or an official acting within the scope of official duties, or make other arrangements, and will issue instructions.

(2) Usually, the persons described in § 720.20(c)(1) are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases, acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with § 720.20(b). In exceptional cases when the United States has agreed that service of process will be accepted by such persons when located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of § 720.20(a) will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal documents. Therefore, if a commanding officer or other officer in the military service personally hands, or attempts to hand, that person the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a person described in § 720.20(c)(1), a commanding officer shall notify the person of the fact that a particular foreign court is attempting to serve process and also inform that person that the process may be ignored or received. If the person to be served chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the commanding officer had the document, that the person chose to ignore it, and that no physical offer of service had been made. The commanding officer will advise the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate, of all requests for service of process from a foreign court and the details thereof.

(d) *Leave or liberty to be granted persons served with process.* When members or civilian employees are either served with process, or voluntarily accept service of process, in cases where the United States is not a party to the litigation, the commanding officer normally will grant leave or liberty to the person served to permit compliance with the process, unless to

do so would have an adverse impact on naval operations. When a member or civilian employee is a witness for a nongovernmental party because of performance of official duties, the commanding officer may issue the person concerned permissive orders authorizing attendance at the trial at no expense to the Government. The provisions of 32 CFR part 725 must also be considered in such cases. Members or civilian employees may accept allowances and mileage tendered; however, any fees tendered for testimony must be paid to the Department of the Navy unless the member or employee is on authorized leave while attending the judicial proceeding. When it would be in the best interests of the United States Government (for example, in State criminal trials), travel funds may be used to provide members and civilian employees as witnesses as provided in the Joint Federal Travel Regulations. Responsibility for the payment of the member's mileage and allowances will be determined pursuant to the Joint Federal Travel Regulations, Volume 1, paragraph M8300, subsections 1-3.³

(e) *Report where service not allowed.* Where service of process is not permitted, or where the member or civilian employee is not given leave, liberty, or orders to attend a judicial proceeding, a report of such refusal and the reasons therefor shall be made by telephone, or message if telephone is impractical, to the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate.

§ 720.21 Members or civilian employees subpoenaed as witnesses in state courts.

Where members or civilian employees are subpoenaed to appear as witnesses in State courts, and are served as described in §§ 720.20, 720.20(d) applies. If these persons are requested to appear as witnesses in State courts when the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases), follow the procedures described in § 720.22. If State authorities are attempting to obtain the presence of a member or a civilian employee as a witness in a civil or criminal case, and such person is unavailable because of an overseas assignment, the command should immediately contact the Judge Advocate General, or the Associate General Counsel (Litigation), as appropriate.

§ 720.22 Members or civilian employees subpoenaed as witnesses in Federal courts.

(a) *Witnesses on behalf of Federal Government.* When members or civilian employees of the Department of the Navy are required to appear as witnesses in a Federal Court to testify on behalf of the Federal Government in cases involving Department of the Navy activities, the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will issue temporary additional duty orders to that person. The charges for such orders will be borne by the activity to which the required witness is attached. Payment to witnesses will be as provided by the Joint Federal Travel Regulations and U.S. Navy travel instructions. If the required witness is to appear in a case in which the activities of the Department of the Navy are not involved, the Department of the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, section 046268.

(b) *Witnesses on behalf of nongovernmental parties—(1) Criminal actions.* When members or civilian employees are served with a subpoena to appear as a witness for a defendant in a criminal action and the fees and mileage required by rule 17(d) of the Federal Rules of Criminal Procedure are tendered, the commanding officer may issue the person subpoenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the person's absence would have an adverse impact on naval operations. In such a case, a full report of the circumstances will be made to the Judge Advocate General or, in the case of civilian employees, to the Associate General Counsel (Litigation). In those cases where fees and mileage are not tendered as required by rule 17(d) of the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the commanding officer also may issue permissive orders at no cost to the Government. Such persons, however, should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

(2) *Civil actions.* When members or civilian employees are served with a subpoena to appear as a witness on the behalf of a nongovernmental party in a civil action brought in a Federal court, the provisions of § 720.20 apply.

³ See footnote 1 of § 720.5(b).

§ 720.23 Naval prisoners as witnesses or parties in civilian courts.

(a) *Criminal actions.* When Federal or State authorities desire the attendance of a naval prisoner as a witness in a criminal case, they should submit a written request for such person's attendance to the Judge Advocate General. The civilian authority should include the following averments in its request:

(1) That the evidence to be derived from the prisoner's testimony is unavailable from any other source;

(2) That the civilian authority will provide adequate security arrangements for the prisoner and assume responsibility for the prisoner while he is in its custody; and

(3) that the civilian authority will assume all costs of transporting the prisoner from the brig, of maintaining that prisoner while in civilian custody, and of returning the prisoner to the brig from which he was removed.

The civilian authority should also include in its request an estimate of the length of time the prisoner's services will be required, and should specify the mode of transport by which it intends to return the prisoner. Upon receipt of such a request, authority by the Judge Advocate General will be given, in a proper case, for the production of the requested naval prisoner in court without resort to a writ of habeas corpus ad testificandum (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

(b) *Civil actions.* The Department of the Navy will not authorize the attendance of a naval prisoner in a Federal or State court, either as a party or as a witness, in private litigation pending before such a court. The deposition of a naval prisoner may be taken in such a case, subject to reasonable conditions or limitations imposed by the command concerned.

§ 720.24 Interviews and depositions in connection with civil litigation in matters pertaining to official duties.

Requests to interview, depose, or call as witnesses, current or former members or civilian employees of the Department of the Navy, regarding information obtained in the course of their official duties, including expert testimony related thereto, shall be processed in accordance with 32 CFR Part 725.

§ 720.25 Repossession of personal property.

Repossession of personal property, located on a Navy or Marine Corps installation, belonging to a member or to any dependent residing at or located on a Department of the Navy installation,

may be permitted in the discretion of the commanding officer of the installation where the property is located, subject to the following. The documents purporting to authorize repossession and the procedures for repossessing the property must comply with State law. Prior to permitting physical repossession of any property, the commanding officer shall cause an informal inquiry into the circumstances and then determine whether to allow the repossession. If repossession is to be allowed, the person whose property is to be repossessed should be asked if he wishes to relinquish the property voluntarily. Repossession must be carried out in a manner prescribed by the commanding officer. In the case of property owned by civilian employees of the Department of the Navy or civilian contractors or their employees or dependents, the commanding officer should direct that the disputed property be removed from the installation until the commanding officer is satisfied that the dispute is resolved.

§§ 720.26-720.29 [Reserved]

Dated: January 31, 1992.

Wayne T. Baucino,
Lieutenant, JAGC, U.S. Naval Reserve,
Alternate Federal Register Liaison Officer.
[FR Doc. 92-3465 Filed 2-12-92; 8:45 am]
BILLING CODE 3810-AE-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 705, 706, 731, 749, and 752

[AIDAR Notice 92-2]

Miscellaneous Amendments

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to make miscellaneous editorial and administrative changes.

EFFECTIVE DATE: March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Kelly, FA/PPE, room 1600L, SA-14, Agency for International Development, Washington, DC 20523-1435, Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: A brief summary of the changes being made to the AIDAR follows:

Section 701.105 which lists AIDAR information collections together with

their OMB approval number, approval expiration date and burden estimate is being re-formatted, and one additional previously approved item is being added. This is a non-substantive editorial change.

Section 705.202(b)(2) is being removed as redundant. The exemption in 705.202(b)(1) is considered to cover the same subject matter. This is considered a non-substantive editorial change.

Section 706.302-70(b)(2) (the exception to full and open competition requirements based on impairment of foreign aid programs) has been amended to increase the exception for awards by an overseas contracting activity from \$100,000 to \$250,000. This change reflects an adjustment for inflation and an increase which will help reduce the administrative burden on AID's contracting officers overseas without significantly affecting contracting opportunities by U.S. small business. Based on dollar figures developed by the CAO and reports submitted to the AID Competition Advocate, increasing the exception from \$100,000 to \$250,000 will exempt approximately another 6% of the actions awarded overseas, but will still leave approximately 93% of the dollars spent on contracts overseas outside of this exemption. This proposed change was coordinated with the Small Business Administration, which concurred with the proposed change and concluded that increasing the exception from \$100,000 to \$250,000 would not be detrimental to small business interests.

Various sections in part 731 (cost principles) have been revised/amended to make them briefer, eliminate repetition, and make them clearer. All of the changes are considered editorial and non-substantive.

Section 749.111-71(a) has required that termination settlements over \$50,000 be reviewed by the AID Settlement Review Board. Based on experience with proposed settlements, considering the levels of contracting authority within AID, and allowing for inflation, the Agency has decided to increase the review threshold from \$50,000 to \$100,000. This is considered an internal administrative change with no effect outside of the Agency.

The introductory statements to AID's contract clauses (sections 752.200 and 752.7000) are being amended to incorporate reference to AIDAR Appendix J concerning personal services contracts with cooperating country and third country nationals, in addition to the existing reference to Appendix D concerning U.S. personal services contracts. This is a non-substantive editorial change.

In section 752.7015, the address for contractor mail being sent via diplomatic pouch is being updated. This is an editorial change.

A new contract clause requiring that AID be acknowledged in publications funded under AID contracts, and that such acknowledgements include a disclaimer that opinions expressed do not necessarily represent the views of AID is being added as section 752.7034. This is considered an administrative change without significant impact on our contractors.

A new contract clause encouraging contractors to publicly announce receipt of the contract, and of subsequent progress or significant accomplishments is being added as section 752.7035. This is an optional clause for use when the technical office believes it to be appropriate. This is considered an administrative change without significant impact on our contractors.

The changes being made by this Notice are editorial and administrative and are not considered significant rules

under FAR section 1.301 or subpart 1.5, nor major rules as defined in Executive Order 12291. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the "FOR FURTHER INFORMATION CONTACT" section of the preamble.

List of Subjects in 48 CFR Parts 701, 705, 706, 731, 749, and 752

Government procurement.

Accordingly, for the reasons set out in the Preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citation for parts 701, 705, 706, 731, 749, and 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

2. Paragraph (a) of section 701.105 is revised to read as follows:

701.105 OMB approval under the Paperwork Reduction Act.

(a) The following information collection and recordkeeping requirements established by AID have been approved by OMB, and assigned an OMB control number and approval/expiration dates as specified below:

AIDAR segment	OMB control no.	Expiration date	Burden hours per report
733.7003(c)	0412-0520	Oct. 31, 1993.	40
752.209-70	0412-0520	do.....	4
752.219-8	0412-0520	do.....	1
752.245-70	0412-0520	do.....	1
752.245-71	0412-0520	do.....	1
752.7001(a)	0412-0520	do.....	.5
752.7001(b)	0412-0520	do.....	.5
752.7002(j)	0412-0520	do.....	1
752.7003	0412-0520	do.....	8
752.7004(b)(4)	0412-0520	do.....	.5
752.7032	0412-0520	do.....	2
752.7033	0412-0536	May 31, 1992.	4

PART 705—PUBLICIZING CONTRACT ACTIONS

Subpart 705.2—Synopsis of Proposed Contract Actions

3. Paragraph (b) of section 705.202 is revised to read as follows:

705.202 Exceptions.

(b) The head of the Agency for International Development has determined after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that

advance notice is not appropriate or reasonable for contract actions described in 706.302-70(b)(1) through (b)(3).

PART 706—COMPETITION REQUIREMENTS

Subpart 706.3—Other Than Full and Open Competition

706.302-70 [Amended]

4. Paragraph (b)(2) of section 706.302-70, impairment of foreign aid programs, is amended by removing "\$100,000" and adding "\$250,000".

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.2—Contracts With Commercial Organizations

5. Section 731.205-6 is revised as follows:

731.205-6 Compensation for personal services.

(a) *General.* When establishing the workweek for employees overseas the contractor will take local and AID Mission practice into account and will insure that the workweek is compatible with that of those AID Mission and Cooperating Country employees with whom the contractor will be working.

(b) and (c) [Reserved].

(d) *Salaries and wages.* It is AID policy that if an employee's base salary

plus overseas recruitment incentive, if any (see AIDAR 731.205-70), exceeds the maximum hourly, daily, or annual rate for a Foreign Service Officer Class FS-1, it will be allowable only if approved in writing by the Contracting Officer. (AID procedures for review/approval of salaries in excess of the FS-1 rate are set forth in Appendix G to the AID Acquisition Regulation.) AID policies on compensation of third country national or cooperating country national employees are set forth in AIDAR 722.170.

(e) through (l) [Reserved].

(m) *Fringe benefits.* AID's policies on certain fringe benefits related to overseas service, including but not limited to leave, holidays, differentials and allowances, etc. are set forth in the appropriate contract clauses in AIDAR subpart 752.70.

6. Section 731.205-46 is revised as follows:

731.205-46 Travel costs.

It is AID policy to require prior written approval of international travel by the Contracting Officer. See AIDAR 752.7032 for specific requirements and procedures.

7. A new section 731.205-70 is added to read as follows:

731.205-70 Overseas recruitment incentive.

(Note: the term "employee" as used in this section means an employee who is a U.S. citizen or a U.S. resident alien.)

(a) If a contractor employee serving overseas under a contract does not qualify for the exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), such employee is eligible to receive an overseas recruitment incentive (ORI), to the extent the ORI is authorized by the contractor's normal policy and practice; is deemed necessary by the contractor to recruit and retain qualified employees for overseas services; and does not exceed 10% of the base salary of the employee from date of arrival at overseas post to begin assignment to date of departure from post at the end of assignment. ORI is to be paid as a single payment at the end of the employee tour of duty overseas. The contractor shall take all reasonable and prudent steps to ensure that ORI is not paid to any employee who has received the IRS section 911 exemption.

(b) In the event that an employee subsequently receives a section 911 exclusion for any part of the base salary upon which this supplement has been paid, such supplement or appropriate

portion thereof shall be reimbursed by the contractor to AID with interest. The interest shall be calculated at the average U.S. Treasury rate in effect for the period that the contractor or his employee had the funds. Neither the contractor's nor the subcontractor's inability to collect refunds from eligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

Subpart 731.3—Contracts With Educational Institutions

8. Section 731.371 is revised as follows:

731.371 Compensation for personal services.

(a) *General.* When establishing the workweek for employees overseas the contractor will take local and AID Mission practice into account and will ensure that the workweek is compatible with that of those AID Mission and Cooperating Country employees with whom the contractor will be working.

(b) *Salaries and wages.* (1) It is AID policy that if an employee's base salary plus overseas recruitment incentive, if any (see AIDAR 731.205-70), exceeds the maximum hourly, daily, or annual rate for a Foreign Service Officer Class FS-1, it will be allowable only if approved in writing by the Contracting Officer. (AID procedures for review/approval of salaries in excess of the FS-1 rate are set forth in Appendix G to the AID Acquisition Regulation.)

(2) In considering consulting income as a factor when determining allowable salary for service under a contract:

(i) For faculty members working under annual appointments, salary for service under the contract may include the employee's on-campus salary plus "consulting income" (that is, income from employment other than the employee's regular on-campus appointment, excluding business or other activities not connected with the employee's profession) earned during the year preceding employment under the contract.

(ii) For faculty members working under academic year appointments, salary for service under the contract may include the employee's on-campus academic year salary plus "consulting income" as defined above earned during the year preceding employment under the contract, or salary for service under the contract may be derived by annualizing the academic year salary (in which case "consulting income" may not be included).

(3) AID policies and compensation of third country national or cooperating

country national employees are set forth in AIDAR 722.170.

9. A new section 731.372 is added to read as follows:

731.372 Fringe benefits.

AID's policies on certain fringe benefits related to overseas service, including but not limited to leave, holidays, differentials and allowances, etc. are set forth in the appropriate contract clauses in AIDAR 752.70.

10. A new section 731.373 is added to read as follows:

731.373 Overseas recruitment incentive.

AID's policies regarding overseas recruitment incentives are set forth in AIDAR 731.205-70. These policies are also applicable to contracts with an educational institution.

Subpart 731.7—Contracts With Nonprofit Organizations

11. Section 731.772 is revised as follows:

731.772 Compensation for personal services.

The policies set forth in AIDAR 731.205-6 are also applicable to contracts with a nonprofit organization.

12. A new section 731.774 is added to read as follows:

731.774 Overseas recruitment incentive.

AID's policies regarding overseas recruitment incentives are set forth in AIDAR 731.205-70. These policies are also applicable to contracts with a nonprofit organization.

PART 749—TERMINATION OF CONTRACTS

Subpart 749.1—General Policies

749.111-71 [Amended]

13. Paragraphs (a)(1) and (a)(2)(i) and (ii) of § 749.111-71, Required review and approval, are amended by removing "\$50,000" and adding "\$100,000".

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

752.200 [Amended]

14. Section 752.200, Scope of subpart, is amended by adding the following to the last sentence of the section: "and AIDAR Appendix J—Direct AID Contracts with Cooperating Country Nationals and with Third Country Nationals for Personal Services Abroad."

Subpart 752.70—Texts of AID Contract Clauses**752.7000 [Amended]**

15. Section 752.7000, Scope of subpart, is amended by adding the following to the last sentence of the section: "and AIDAR Appendix J—Direct AID Contracts with Cooperating Country Nationals and with Third Country Nationals for Personal Services Abroad."

752.7015 [Amended]

16. Section 752.7015, Use of Pouch Facilities, is amended by revising the contract clause date from "(APR 1984)" to "(JUNE 1991)", and by revising paragraph (a)(4) of the clause as follows:

752.7015 Use of Pouch Facilities.

* * *

(a) * * *

(4) Official mail as authorized by paragraph (c)(1) of this clause should be addressed as follows: Individual or Organization Name, followed by the symbol "(C)", City Name of Post, Agency for International Development, Washington, DC 20523-0001.

* * *

17. A new section 752.7034 is added to read as follows:

752.7034 Acknowledgement and disclaimer.

For use in any AID contract which funds or partially funds publications, videos, or other information/media products.

Acknowledgement and Disclaimer (Dec 1991)

(a) AID shall be prominently acknowledged in all publications, videos or other information/media products funded or partially funded through this contract, and the product shall state that the views expressed by the author(s) do not necessarily reflect those of AID. Acknowledgements should identify the sponsoring AID Office and Bureau or Mission as well as the U.S. Agency for International Development substantially as follows:

"This (publication, video or other information/media product (specify)) was made possible through support provided by the Office of _____, Bureau for _____, U.S. Agency for International Development, under the terms of Contract No. _____. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development."

(b) Unless the contractor is instructed otherwise by the cognizant technical office, publications, videos or other information/media products funded under this contract and intended for general readership or other general use will be marked with the AID logo and/or U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT appearing either at the top or at the bottom of the front cover or, if more suitable, on the

first inside title page for printed products, and in equivalent/appropriate location in videos or other information/media products. Logos and markings of co-sponsors or authorizing institutions should be similarly located and of similar size and appearance. (End of Clause.)

18. A new section 752.7035 is added to read as follows:

752.7035 Public Notices.

The following clause is for use when the cognizant technical office determines that the contract is of public interest, and that both the public and the Government would benefit from public notices concerning the contract, and requests that the Contracting Officer include the clause in the contract.

Public Notices (Dec 1991)

It is AID's policy to inform the public as fully as possible of its programs and activities. The contractor is encouraged to give public notice of the receipt of this contract and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows: "The U.S. Agency for International Development administers the U.S. foreign assistance program providing economic and humanitarian assistance in more than 80 countries worldwide." The contractor may call on AID's Office of External Affairs for advice regarding public Notices. The contractor is requested to provide copies of notices or announcements to the cognizant technical officer and to AID's Office of External Affairs as far in advance of release as possible. (End of Clause.)

Dated: January 15, 1992.

John F. Owens,
Procurement Executive.

[FR Doc. 92-3235 Filed 2-12-92; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION**49 CFR Part 1121**

[Ex Parte No. 400 (Sub-No. 3)]

Rail Exemption Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies 49 CFR 1121.4(g) to permit the Commission to set different time limits for filing petitions to stay and petitions to reopen when circumstances warrant. This technical amendment to its reissued exemption procedures in 49 CFR part 1121 is not intended to have any substantive effect on any person or proceeding.

EFFECTIVE DATE: This amendment is effective February 12, 1992.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 927-5660, (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

This action will have no significant effect on a substantial number of small entities.

List of Subjects in 49 CFR Part 1121

Administrative practice and procedure, Railroads.

Decided: February 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners, Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1121 of the Code of Federal Regulations is amended as follows:

PART 1121—RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 continues to read as follows:

Authority: 49 U.S.C. 10505; 5 U.S.C. 553.

2. In § 1121.4, paragraph (g) is revised to read as follows:

§ 1121.4 Procedures.

* * *

(g) An exemption generally will be effective 30 days from the service date of the decision granting the exemption. Unless otherwise provided in the decision, petitions to stay must be filed within 10 days of the service date, and petitions to reopen under 49 CFR part 1115 or 1152.25(e) must be filed within 20 days of the service date. A petition to reopen may include comments on the proposal, requests for employee protection, or other conditions.

* * *

[FR Doc. 92-3493 Filed 2-12-92; 8:45 am]

BILLING CODE 7035-01-M