NHTSA conducted extensive testing of its own. Since 1988, the agency has not conducted any additional testing of its own in this area. NHTSA would like commenters to indicate whether they are aware of any study or testing that was not considered in the 1988 termination that should be considered in preparing this report to Congress.

The agency invites written comments from all interested parties. It is requested but not required that 10 copies of each written comment be submitted. As always, NHTSA will try to consider comments that it receives after the comment closing date. However, in this case, the deadline imposed by the Senate Appropriations Committee will not allow the agency to give much consideration to comments received after the November 23 comment closing date.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

Issued on October 27, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-26862 Filed 10-28-93; 11:19 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 210

Tuesday, November 2, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 18, 1993.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 at Worcester Area Chamber of Commerce for the following reasons:

- Worcester—Northern Gateway
- Legislative update
- Report of the Executive Director
- Report of the Chairman

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 730, Uxbridge, MA 01569, Tel.: (508) 278–9400

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,

Executive Director.

[FR Doc. 93–26992 Filed 10–29–93; 12:07 pm]

BILLING CODE 4310–70–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, November 3, 1993, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED: Mouthwash Petition PP 93–1.

The staff will brief the Commission on petition PP 93–1 requesting that the Commission require child-resistant packaging for mouthwash containing more than 5% ethanol.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: October 27, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–27032 Filed 10–29–93; 2:53 pm]

BILLING CODE 6355–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on November 8, 1993. The meeting will commence at 9:00 a.m. and continue until all business has been concluded.

PLACE: The Legal Services Corporation, 750 First Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting will be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session.[1] At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session held on September 29, 1993. The Board will hear and consider the report of the General Counsel on litigation to which the Corporation is, or may become, a party. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will consider internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), (f), and (h)].[2] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

OPEN SESSION:

1. Swearing In of Board of Directors.
2. Approval of Agenda.
3. Election of Board Chairperson.
4. Election of Board Vice Chairperson.
5. Ratification of Minutes of September 29, 1993 Meeting.
6. Consideration of the Structure and Composition of Board Committees Pursuant to 45 C.F.R. Sections 1601.27 and 1607.28.
   a. Standing Committees:
   —Audit & Appropriations Committee;
   —Operations & Regulations Committee;
   —Provision for the Delivery of Legal Services Committee.
   b. "Temporary" Committees:
   —Office of the Inspector General Oversight Committee;
   —Reauthorization Committee;
   —Other.
7. President's Report.
8. Treasurer/Comptroller's Budget Report.
9. General Counsel's Overview of Board's Bylaws and Other Relevant Provisions of Law.
10. Officers' and Division Directors' Reports.
11. Inspector General's Report.
12. Consideration of Motion to Close Meeting for Executive Session.

CLOSED SESSION:

13. Consultation of Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
14. Consultation by Board with the President on Internal Personnel and Operational Matters.
15. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is, or May Become, a Party.
16. Consideration of Internal Personnel and Operational Matters.
17. Ratification of Minutes of Executive Session Held on September 29, 1993.

[1] The vote will be taken during the meeting and the results will be posted at Corporation headquarters on the 11th floor the following day.

[2] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Board meeting(s).

OPEN SESSION (Resumed):

18. Consideration of Other Business.
19. Scheduling of Next Board and Committee Meetings.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: October 29, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93-27003 Filed 10–29–93; 2:37 pm]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 1, 8, 15, and 22, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 1

Wednesday, November 3

11:00 a.m.
Affirmation/Discussion on Vote (Public Meeting)
a. Final Rule, 10 CFR Parts 30, 40, 50, 70, and 72, "Self-Guarantee as an Additional Financial Assurance Mechanism" (Tentative)
(Contact: Clark Prichard, 301–492–3734)

Week of November 8—Tentative

Monday, November 8

9:30 a.m.
Briefing on Site Decommissioning Management Plant (Public Meeting)
(Contact: David Fauver, 301–504–2554)
11:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Wednesday, November 10

10:00 a.m.
Briefing by Office of Technology Assessment on Aging Nuclear Power Plants: Managing Plant Life and Decommissioning (Public Meeting)
2:00 p.m.
Briefing on NRC Research Programs on Human Factors (Public Meeting)
(Contact: Tom King, 301–492–3510)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 15—Tentative

There are no Commission meetings scheduled for the Week of November 15.

Week of November 22—Tentative

Wednesday, November 24

9:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292. Contact Person for More Information: William Hill (301) 504–1661.

Dated: October 28, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-27017 Filed 10–29–93; 2:38 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register

Vol. 58, No. 210

Tuesday, November 2, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31-93]

Foreign-Trade Zone, Cowlitz County WA; Application for Subzone, Sharp Microelectronics Technology, Inc. (Liquid Crystal Displays), Camas, WA; Amendment of Application

Correction

In notice document 93-23634 appearing on page 50331 in the issue of Monday, September 27, 1993, make the following correction:

In the second column, in the last full paragraph, in the second line insert after "until" the words "November 12, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021; I.D. 092293B]

Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-23850 appearing on page 50857 in the issue of Wednesday, September 29, 1993, make the following correction:

In the second column, in EFFECTIVE DATE:, in the first line, insert "September 29, 1993," after "12 noon,".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

Correction

In rule document 93-24656 beginning on page 52656 in the issue of Tuesday, October 12, 1993, make the following correction:

On page 52659, in the first column, in footnote 15, in the second paragraph, in the ninth line "has" should read "have".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6997

[MT-930-4210-06; MTM 80092]

Withdrawal of Public Mineral Estate Within the Charles M. Russell National Wildlife Refuge; MT

Correction

In rule document 93-23506 beginning on page 50518 in the issue of Tuesday, September 28, 1993, make the following corrections:

1. On page 50519, in the third column, in T. 20 N., R. 31 E., in Sec. 4, in the second line, "S½W¼;" should read "S½SW¼;".

2. On page 50520, in the second column, in T. 21 N., R. 37 E., in Sec. 14, "E½SW¼;" should read "E½SE¼;".

3. On the same page, in the third column, in T. 22 N., R. 42 E., in Sec. 27, in the first line, "NW¼,NW¼," should read "NW¼NW¼,", and in the second line, "NE¼SW¼;" should read "SE¼SW¼;".

4. On page 50521, in the first column, in T. 22 N., R. 43 E., in Secs. 17 to 21, in the first line, "and secs. 17" should read "and secs. 27".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32891; File No. SR-PHLX-93-29]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing to Amend PHLX Rule 1014

Correction

In notice document 93-22887 beginning on page 48921 in the issue of Monday, September 20, 1993, in the second column, below the subject heading insert "September 14, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANM-14]

Alteration of VOR Federal Airways

Correction

In rule document 93-22159 beginning on page 47631 in the issue of Friday, September 10, 1993, make the following corrections:

1. On page 47632, in the first column, in the 2d paragraph, in the 23d line, "V-238" should read "V-328".

2. On the same page, in the second column, in the fifth line from the top, "to" should read "at".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AGL-4]

Establishment of Class E Airspace; Moose Lake, MN

Correction

In rule document 93-21673 beginning on page 47042 in the issue of Tuesday, September 7, 1993, on page 47042, in the third column, in the fourth line from the top, "airspace" should read "aircraft".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 930949-3249; I.D. 092393A]

Threatened Fish and Wildlife; Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Stellar Sea Lion Protection Areas

Correction

In rule document 93-24967 beginning on page 53138 in the issue of Thursday, October 14, 1993, make the following correction:

§ 227.12 [Corrected]

1. On page 53139, in § 227.12(a)(3), Table 1 should read as set forth below:

TABLE 1.—LISTED STELLER SEA LION ROOKERY SITES [1]

Island	From		To		NOAA Chart	Notes
	Lat.	Long.	Lat.	Long.		
*	*	*	*	*	*	*
12. Akun I	54°18.0N	165°32.5W	54°18.0N	165°31.5W	16547	Billings Head Bight.
*	*	*	*	*	*	*
20. Kasatochi I	52°10.0N	175°31.5W	52°10.5N	175°29.0W	16480	N half of island.
21. Adak I	51°36.5N	176°59.0W	51°38.0N	176°59.5W	16460	SW Point, Lake Point.
*	*	*	*	*	*	*
26. Amchitka I	51°22.5N	179°28.0E	51°21.5N	179°25.0E	16440	East Cape.
27. Amchitka I	51°32.5N	178°49.5E			16440	Column Rocks.
*	*	*	*	*	*	*
35. Attu I	52°54.5N	172°28.5E	52°57.5N	172°31.5E	16681	S Quadrant.

[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

* * * * *

BILLING CODE 1505-01-D

federal register

Tuesday
November 2, 1993

Part II

International Development Cooperation Agency

Agency for International Development

48 CFR Part 752 et al.
Miscellaneous Amendments to Acquisition Regulations; Final Rule

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Part 752 and Appendices D and J to Chapter 7

[AIDAR Notice 93-3]

Miscellaneous Amendments to Acquisition Regulations

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: December 2, 1993.

FOR FURTHER INFORMATION CONTACT: FA/PPE, Mrs. Patricia L. Bullock, Room 1600I, 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:

Sections 752.7029 and 752.7033 which cover post privileges and physical fitness are amended to delete the requirement that medical examination results be reviewed by the Office of Medical Services in the State Department.

Appendix D on Personal Services Contract (PSC) with U.S. citizens and U.S. resident aliens is being amended as follows: (1) Several AIDAR definitions are replaced by FAR definitions; (2) new AID budget policy on forward funding of PSCs under the Operating Expense account is implemented; (3) the restriction on PSC employees negotiating with foreign governments and international organizations is deleted; (4) new publicizing requirements in the class justification for other than full and open competition are implemented; (5) coverage on contingency security is added for use when the Contracting Officer determines that the PSC employee is needed prior to clearance; (6) coverage on annual salary increases is clarified; (7) PSC pouch address is updated; (8) medical examination requirements are amended; (9) a clause on medical evacuation coverage is added; (10) the text of several FAR clauses is deleted and the clauses are listed separately and required to be attached to the PSC in full text; (11) a FAR citation is corrected; (12) the Cover Page is revised.

Appendix J on Personal Services Contracts (PSCs) with Cooperating Country Nationals (CCN) and Third Country Nationals (TCN) is being amended as follows: (1) Several AIDAR definitions are replaced by FAR definitions; (2) new AID budget policy on forward funding of PSCs under the Operating Expense account is implemented; (3) the restriction on PSC employees negotiating with foreign governments and international organizations is deleted; (4) a requirement is added for written justification signed by the Mission Director for an exception to use of the local compensation plan; (5) a requirement is added for Contracting Officer's written certification in each PSC file that competition requirements have been met; (6) an alternate schedule is incorporated which recognizes that the PSC is a means to employ AID's foreign national workforce; (7) the General Provisions and Additional General Provisions for CCNs and TCNs are combined and reformatted; (8) a clause on medical evacuation coverage for TCNs is added; (9) the text of several FAR clauses is deleted and the clauses are listed separately and required to be attached to the PSC in full text; (10) a FAR citation is corrected; (11) the Cover Page is revised.

The changes being made by the Notice are editorial and administrative and should not have a significant impact on our contractors. This Notice is not considered a significant rule under FAR 1.301 or Subpart 1.5 nor a major rule as defined in Executive Order 12291. This Notice will not have an impact on a substantial number of small entities as contemplated by the Regulatory Flexibility Act. Information collection requirements in the Notice have been approved by OMB under the 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 Chapter 7

Government procurement.

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

1. The authority citation in Part 752 continues to read as follows:

Authority: Sec. 621, Public Law 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 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

§ 752.7029 [Amended]

2. Section 752.7029 is amended by removing the clause date "(DEC 1990)" and adding in its place "(JULY 1993)", and by adding a comma after the word "policy" and removing the following phrase "* * * and review of medical examination results by the State Department Office of Medical Services in accordance with the clause of this contract entitled "Physical Fitness," * * *" from the first sentence of paragraph (a) of the clause.

3. Section 752.7033 is amended by revising the clause date and paragraph (b)(1) of the clause as follows:

§ 752.7033 Physical fitness.

* * * * *

Physical Fitness (July 1993)

* * * * *

(b) *Assignments of 60 days or more in the Cooperating Country.* (1) The Contracting Officer shall provide the contractor with a reproducible copy of the "AID Contractor Employee Physical Examination Form". This form is for collection of information; it has been reviewed and approved by OMB, and assigned Control No. 0412-0356. Information required by the Paperwork Reduction Act for reporting the burden estimate, the points of contact regarding burden estimate, and the OMB approval expiration date, are printed on the form. The contractor shall reproduce the form as required, and provide a copy to each employee and authorized dependent proposed for assignments of 60 days or more in the Cooperating Country. The contractor shall have the employee and all authorized dependents obtain a physical examination from a licensed physician, who will complete the form for each individual. The employee will deliver the physical examination form(s) to the embassy health unit in the Cooperating Country.

* * * * *

Appendices to Chapter 7

4. Appendix D is revised as follows:

APPENDIX D—DIRECT AID CONTRACTS WITH A U.S. CITIZEN OR A U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

1. *General*—(a) *Purpose.* This appendix sets forth the authority, policy, and procedures under which AID contracts with

a U.S. citizen or U.S. resident alien for personal services abroad.

(b) *Definitions.* (1) *Personal services contract* (PSC) means a contract that, by its express terms or as administered, makes the contract or personnel appear, in effect, Government employees (see FAR 37.104).

(2) *Employer-employee relationship* means an employment relationship under a service contract with an individual which occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, the contractor is subject to the relatively continuous supervision and control of a Government officer or employee.

(3) *Non-personal services contract* means a contract under which the personnel rendering the services are not subject either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

(4) *Independent contractor relationship* means a contract relationship in which the contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under this relationship, the Government does not normally supervise the performance of the work, control the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) *Resident Hire* means a U.S. citizen who, at the time of hire as a PSC, resides in the cooperating country (i) as a spouse or dependent of a U.S. citizen employed by a U.S. government agency or under any U.S. Government-financed contract or agreement, or (ii) for reasons other than for employment with a U.S. government agency or under any U.S. government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes persons who at the time of contracting are lawfully admitted permanent residents of the United States.

(6) *U.S. resident alien* means a non-U.S. citizen lawfully admitted for permanent residence in the United States.

(7) *Abroad* means outside the United States and its territories and possessions.

(8) *AID direct-hire employees* means civilian employees appointed under AID Handbook 25 procedures.

2. *Legal Basis.* (a) Section 635(b) of the Foreign Assistance Act of 1961, as amended (hereinafter referred to as the "FAA") provides the Agency's contracting authority.

(b) Section 636(a)(3) of the FAA (22 U.S.C. 2396(a)(3)) authorizes the Agency to enter into personal services contracts with individuals for personal services abroad and provides further that such individuals "* * * shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission."[1]

3. *Applicability.* (a) This appendix applies to all personal services contracts with U.S. citizens or U.S. resident aliens to provide assistance abroad under Section 636(a)(3) of the FAA.

(b) This appendix does not apply to:

(1) Nonpersonal services contracts with U.S. citizens or U.S. resident aliens; such contracts are covered by the basic text of the FAR and the AIDAR.

(2) Personal services contracts with individual Cooperating Country Nationals (CCNs) or Third Country Nationals (TCNs); such contracts are covered by appendix J of this chapter.

(3) Other personal services arrangements covered by AID Handbook 25—Employment and Promotion.

(4) Interagency agreements (e.g., PASAs and RSSAs) covered by AID Handbook 12—Use of Federal Agencies.

4. *Policy. General.* AID may finance, with either program or operating expense (OE) funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with an individual U.S. citizen or U.S. resident alien for personal services abroad.

(1) *Program funds.* Under the authority of Section 635(h) of the FAA, program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating Expense Funds.* Pursuant to AID budget policy, OE funded salaries and other recurrent cost items may be forward funded for a period of up to three (3) months beyond the fiscal year in which these funds were obligated. Non-recurring cost items may be forward funded for periods not to exceed twenty-four (24) months where necessary and appropriate to accomplishment of the work.

(b) *Limitations on Personal Services Contracts.*

(1) Personal services contracts may only be used when adequate supervision is available.

(2) Personal services contracts may be used for commercial activities. Commercial activities provide a product or service which could be obtained from a commercial source. See Attachment A of OMB Circular A-76 for a representative list of such activities.

(3) Personal services contracts may be used for Governmental functions (defined by OMB Circular A-76 as functions so intimately related to the public interest as to mandate performance by Government employees) *except:*

(i) Entering into any agreement (e.g., loan, grant, contract) on behalf of the United States.

(ii) Making decisions involving governmental functions such as planning, budget, programming and personnel selection. Services will be limited to making recommendations with final decision-making authority reserved for authorized AID direct-hire employees.

(iii) Supervision of AID direct-hire U.S. Citizen employees.

(c) *Withholdings and Fringe Benefits.*

(1) Personal services contractors (PSCs) are Government employees for purposes of Title 26 of United States Code and are therefore subject to social security (FICA) and Federal income tax (FIT) withholdings. As employees, they are ineligible for the "foreign earned income" exclusion under the IRS regulations (see 26 CFR 1.911(c)(3)).

(2) Personal services contractors are treated on par with other Government employees, *except* for programs based on any law administered by the Federal Office of Personnel Management (e.g., incentive awards, life insurance, health insurance, and retirement programs covered by 5 CFR parts 530, 531, 831, 870, 871, and 890). While PSCs are ineligible to participate in any of these programs, the following fringe benefits are provided as a matter of policy:

(i) The employer's FICA contribution for retirement purposes.

(ii) A contribution against the actual costs of the PSC's annual health and life insurance costs. Proof of health and life insurance coverage and its actual cost to the PSC shall be submitted to the Contracting Officer before any contribution is made. (See also paragraph 4(c)(3) of this appendix.)

(A) The contribution for health insurance shall not exceed 50% of the actual cost to the PSC for his/her annual health insurance, or the maximum U.S. Government contribution for a direct-hire employee, as announced annually by the Office of Personnel Management, whichever is less. If the PSC is covered under a spouse's health insurance plan, where the spouse's employer pays some or all of the health insurance costs, the cost to the PSC for annual health insurance shall be considered to be zero.

(B) The contribution for life insurance shall be up to 50% of the actual annual costs to the PSC for life insurance, not to exceed $500.00 per year.

(iii) PSCs shall receive the same percentage pay comparability adjustment as U.S. Government employees subject to the availability of Mission funds.

(iv) PSCs shall receive a 3% annual salary increase subject to satisfactory performance. Such increase may not exceed 3% without a deviation. This 3% limitation also applies to extensions of the same service or negotiations for a new contract for the same or similar services unless a deviation has been approved.

(v) PSCs shall receive the following allowances and differentials provided in the State Department's Standardized Regulations (Government Civilians Foreign Areas) on the same basis as U.S. Government employees (except for resident hires, see paragraph 4(d) and Section 11, General Provisions, Clause 22, "Resident Hire Personal Services Contractors"):

(A) Temporary lodging allowance (Section 120),[2]

(B) Living quarters allowance (Section 130),[2]

(C) Post allowance (Section 220),[2]

(D) Supplemental post allowance (Section 230),[2]

(E) Separate maintenance allowance (Section 260),[3]

(F) Education allowance (Section 270),[3]

(G) Educational travel (Section 280),[3]

(H) Post differential (Chapter 500),

(I) Payments during evacuation/authorized departure (Section 600), and

(J) Danger pay (Section 650).

Any allowance or differential that is not *expressly stated* in this paragraph is not authorized for any PSC unless a deviation is approved.

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[1] The Civil Service Commission is now the Federal Office of Personnel Management.

[2] Mission Directors may authorize per diem in lieu of these allowances.

[3] These allowances are not authorized for short tours (i.e., less than a year).

(vi) Health room services may be provided in accordance with the clause of this contract entitled "Physical Fitness and Health Room Privileges."

(vii) PSCs are eligible to receive benefits for injury, disability, or death under the Federal Employees' Compensation Act since the law is administered by the Department of Labor, not the Office of Personnel Management.

(viii) PSCs are eligible to earn four hours of annual leave and four hours of sick leave for each two week period. However, PSCs with previous PSC service (not previous U.S. Government civilian or military service) earn *either* six hours of annual leave for each two week period if their previous PSC service exceeds 3 years, *or* eight hours of annual leave for each two week period if their previous PSC service exceeds 15 years.

(3) A PSC who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraph 4(c)(2)(ii) of this appendix.

(4) Retired U.S. Government employees shall not be paid additional contributions for health or life insurance under their contract (since the Government will normally have already paid its contribution for the retiree) unless the employee can prove to the satisfaction of the Contracting Officer that his/her health and life insurance does not provide or specifically excludes coverage overseas. If coverage overseas is excluded, then eligibility as cited in this clause applies.

(5) Retired U.S. Government employees may be awarded Personal Services Contracts without any reduction in or offset against their Government annuity.

(d) *Resident Hire Personal Services Contractors.*

Resident hire PSCs are not eligible for any fringe benefits (except contributions for FICA, health insurance, and life insurance), including differentials and allowances, unless such individuals can demonstrate to the satisfaction of the Contracting Officer that they have received similar benefits and allowances from their immediately previous employer in the cooperating country, or the Mission Director may determine that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

(e) *Salary Setting.* (1) Salaries for Personal Services Contractors shall be established based on the market value of the position being recruited for. This requires the Contracting Officer in coordination with the Project Officer to determine the correct market value (a salary range) of the position to be filled. The market value of the position then becomes the basis, along with the applicant's certified salary history on the SF 171, "Personal Qualifications Statement," for salary negotiations to be conducted by the Contracting Officer. The SF 171 must be retained in the permanent contract file. Salaries should be consistent with the FS/GS grade level equivalent that the position would normally warrant.

(2) If approved by the Mission Director or the cognizant Assistant Administrator, based on written justification, salary may be negotiated based on the applicant's current earnings adjusted in accordance with the factors set out in paragraphs (e)(2) (i) through (iii) of this clause. Current earnings must be certified by the contractor on the SF 171, (see paragraph 6(b)(3) of this appendix). This is guidance for establishing initial salaries not subsequent increases for the same contractor performing the same function.

(i) As a rule, up to a 3 percent increase above current earnings may be given. However, a 3 percent increase is awarded only to a PSC whose earnings are based on a period of twelve months or more; 2 percent for established earnings of less than twelve months but not less than four months; or 1 percent for established earnings during the past four months.

(ii) Additional percentages may be given for the following factors. If a PSC has worked in a developing country for more than two years, an additional 1 percent may be awarded. Education related to the area of specialization and above the minimum qualification required may warrant an additional 1 percent, and those specialties for which there is keen competition in the employment market or a serious shortage category nationwide may be awarded an additional 2 percent. In addition, related technical experience over 5 years may increase the percentage by 1 and over ten years by 3.

(iii) All requests for an initial rate of pay above 10 percent over current earnings must be approved in writing by the appropriate Regional Assistant Administrator or Mission Director. Current earnings are actual earnings for work reasonably related to the position for which the applicant is being considered.

(3) When an applicant has no current earnings history (e.g., a person returning to the workforce after an absence of a number of years) or when an applicant's current earnings history doesn't accurately reflect the applicant's job market worth (e.g., a Peace Corps volunteer), every effort should be made to establish a market value for the position as a basis for negotiation, notwithstanding the lack of a current earnings history, provided that the applicant has the full qualifications for the job and could command a similar salary in the open job market.

(4) Salaries in excess of the FS–1 level must also be approved by the appropriate Regional Assistant Administrator or Mission Director, as provided for in appendix G of this chapter.

(f) *Incentive Awards.* U.S. PSCs are not eligible to participate in any special awards programs.

(g) *Annual Salary Increase.* PSC's contracts written for more than one year should provide for a 3% annual increase based on satisfactory performance.

(h) *Pay Comparability Adjustment.* PSCs shall receive the same percentage pay comparability adjustment as that received by U.S. Government employees subject to the availability of Mission funds.

5. *Soliciting for Personal Services Contracts.*

(a) *Project Officer's Responsibilities.* The Project Officer will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for. The statement shall be included in the procurement request (e.g., AID Form 1350–1, Project Implementation Order/Technical Services (PIO/T)); the request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) An estimate of what a comparable GS/FS equivalent position should cost, including basic salary, allowances, and differentials, if appropriate;

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing consulting services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's Responsibilities.*

(1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of SF 171s and SF 171As. (Upon receipt, one copy of each SF 171 and SF 171A shall be forwarded to the Project Officer.)

(ii) A detailed statement of duties or a completed position description for the position being recruited for.

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, General Provisions as appropriate, as well as the FAR Clauses to be incorporated in full text and by reference.

(iv) A copy of the AID General Notice entitled "Employee Review of the New Standards of Conduct".

(2) The Contracting Officer shall comply with the requirements of AIDAR 706.302–70(c) as detailed in paragraph 5(c) below.

(c) *Competition.* (1) Under AIDAR 706.302–70(b)(1), Personal Services Contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers:

(i) offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) a justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the AID Procurement Executive to satisfy the requirements of AIDAR 706.302–70(c)(2) for a justification in accordance with FAR 6.303. Use of this class justification for Personal Services Contracts with U.S. Citizens or U.S. Resident Aliens is subject to the following conditions:

(i) If recruited from the United States, the position was either publicized in a U.S. trade/professional/technical publication, the Commerce Business Daily or a newspaper or similar publication, or the procedure in paragraph (iii) below was followed.

(ii) If recruited locally, the position was publicized in the same way that the Mission announces direct hire U.S. citizen positions, or the procedure in paragraph (iii) of this clause was followed.

(iii) As an alternative to the procedures in paragraphs (i) and (ii) of this clause, at least 3 individuals were considered by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation.

(iv) Extensions or renewals with the same individual for continuing services do not need to be publicized.

(v) A copy of the class justification (which was distributed to all AID Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302–70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable.

(3) Since the award of a Personal Services Contract is based on technical qualifications, not price, and since the SF 171, "Personal Qualifications Statement", and SF 171A, "Continuation Sheet for Standard Form 171", are used to solicit for such contracts, FAR Subparts 15.4 and 15.5 and FAR Parts 52 and 53 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this appendix shall govern.

(4) If the appropriate competitive procedure in paragraph (2) of this clause is not followed, the Contracting Officer must prepare a separate justification as required under AIDAR 706.302–70(c)(2).

6. *Negotiating a Personal Services Contract.* Negotiating a Personal Services Contract is significantly different from negotiating a nonpersonal services contract because it establishes an employer-employee relationship; therefore, the selection procedures are more akin to the personnel selection procedures.

(a) *Project Officer's Responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications (i.e. SF 171s) received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's Responsibilities.*

(1) The Contracting Officer shall forward a copy of each SF 171 received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. Normally, the Contracting Officer shall negotiate only the salary (see the salary setting coverage in paragraph 4(e) of this appendix). The terms and conditions of the contract, including differentials and allowances, are not negotiable or waivable without a properly approved deviation (see AIDAR 701.470). If the Contracting Officer can negotiate a salary that is fair and reasonable, then the award shall be made.

(3) The Contracting Officer shall use the certified salary history on the SF 171 as the basis for salary negotiations, along with the market value of the position being recruited for, and the Project Officer's cost estimate.

(4) The Contracting Officer will obtain two copies of IRS Form W–4, "Employee's Withholding Allowance Certificate" from the successful applicant. (Upon receipt, the Contracting Officer will forward one copy of the W–4 to the office of the Controller.)

(5) Security clearance is required for all U.S. citizens entering into AID PSCs. The Contracting Officer will obtain four sets of SF 86, "Security Investigation Data for Sensitive Position", from the successful applicant and forward them to the Office of Security. PSCs may receive a preliminary clearance and be placed under contract prior to receipt of clearance provided the appropriate paper work has been completed, reviewed by IG/SEC/PSI and acknowledged as a "no objection" to the appropriate Mission. See General Provision 24.

7. *Executing a Personal Services Contract.* Contracting activities, whether AID/W or Mission, may execute Personal Services Contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them under Delegation of Authority No. 1103 "To the Assistant to the Administrator for Management, Concerning Acquisition Functions" (50 FR 23842), as amended (see AIDAR 702.170–10).

In executing a Personal Service Contract, the Contracting Officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A PIO/T covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable to the use of a Personal Services Contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for Federal employees (see paragraph 4(b) of this appendix); and

(3) There is no apparent conflict of interest involved (if the Contracting Officer believes that a conflict of interest may exist, the question should be referred to the cognizant legal counsel).

(d) Selection of the contractor is documented and justified. AIDAR 706.302–70(b)(1) provides and exception to the requirement for full and open competition for Personal Services Contracts abroad (see paragraph 5(c) of this appendix);

(e) The standard contract format prescribed for Personal Services Contracts (Sections 10, 11 and 12 to AIDAR appendix D) is used; or that any necessary deviations are processed as required by AIDAR 701.470. (Note: The prescribed contract format is designed for use with contractors who are residing in the U.S. when hired. If the contract is with a U.S. citizen residing in the cooperating country when hired, contract provisions governing physical fitness and travel/transportation expenses, and home leave, allowances, and orientation should be suitably modified (see paragraph 4(d) of this appendix). These modifications are not considered deviations subject to AIDAR 701.470. Justification and explanation of these modifications is to be included in the contract file);

(f) Orientation is arranged in accordance with General Provision 23;

(g) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(h) The contract is complete and correct and all information required on the contract Cover Page (AID Form 1420–36A) has been entered;

(i) The contract has been signed by the Contracting Office and the contractor, and fully executed copies are properly distributed;

(j) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance, including the completed SF 87, to the extent required by AID Handbook 6, *Security;* (see General Provisions 14 and 24 in Section 11 of this appendix).

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical examinations and certifications as required by the contract general provision entitled "Physical Fitness and Health Room Privileges";

(4) One original executed IRS Form W–4 entitled "Employee's Withholding Allowance Certificate" and one copy shall be obtained. The original shall be sent to the Controller of the paying office and one shall be placed in the contract file;

(5) The approval for any salary in excess of FS–1, in accordance with appendix G of this chapter;

(6) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302–70, if applicable;

(7) Any deviation to the policy or procedures of this appendix, processed and approved under AIDAR 701.470;

(8) A fully executed SF 171;

(9) The Memorandum of Negotiation; and

(10) The Contracting Officer's signed certification that competition requirements have been met or satisfied as described in paragraph 5(c) of the policy text of appendix D. The certification shall be a part of the Memorandum of Negotiations.

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 1341 (the Contracting Officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(l) The contractor receives and understandards the AID General Notice entitled "Employee Review of the New Standards of Conduct" and a copy is attached to each contract as provided for in paragraph (c) of General Provision 2, Section 11;

(m) Agency conflict of interest requirements as set out in the General Notice "Employee Review of the New Standards of

Conduct" are met by the contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services contractors which may be in the format set out above or another format convenient for the Contracting Officer, provided that a memorandum containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file;

(o) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in AID Handbook 18, Information Services;

(p) The contractor understands that he/she is an employee of the United States for purposes of the Foreign Assistance Act of 1961, as amended, and Title 26 United States Code. This subjects the employee to withholding for both FICA and Federal Income Tax and precludes the employee from receiving the Federal Earned Income Tax exclusion of 26 U.S.C. Section 911. See Special Note on the Cover Page.

(q) The contractor also understands that he/she may commence work prior to the completion of the security clearance. However, until such time as clearance is received, the contractor may not have access to classified or administratively controlled materials. Failure to obtain clearances will constitute cause for termination.

8. *Post Audit.* The Inspector General, or his/her designee, audits the Personal Services Contracts of all contracting activities for the purpose of ensuring conformance to applicable policy and regulations.

9. *Contracting Format.* The prescribed Contract Cover Page, Contract Schedule, and General Provisions for Personal Services Contracts covered by this appendix are included as follows:

10. *Form AID 1420–36, "Cover Page" and "Schedule".*

11. *"General Provisions".*

12. *FAR Clauses to be incorporated by reference in Personal Services Contracts.*

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

Negotiated Pursuant to Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, and Executive order 11223	Contract Number	
Country of Performance	Amount Obligated This Action	Total Estimated Contract Cost $
Contract For Technical Services	Project Number (if applicable)	
For	Contractor (Name, Street, City, State, Postal Zone)	
Contracting Office (Name and Address)		
Administered By (If other than Contracting Office)	Effective Date	Estimated Completion Date
Cognizant Scientific/Technical Office (Name, Office Symbol, Address)	Accounting and Appropriation Data PIO/T Number (if applicable) ________ Appropriation Number ________	
Supervising Officer	Budget Plan code ________	
This is a Consulting Services Contract (AIDAR 737.272) ☐ Yes ☐ No	Nationality ________ Social Security Number ________	
Payment Will be Made By	Green Card Holder ☐ Yes ☐ No Type of Advance ("X" Appropriate Box) ☐ INITIAL ☐ NONE AUTHORIZED	

The United States of America, hereinafter called the Government, represented by the Contracting Office executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

SPECIAL NOTE: As an employee for purposes of Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, (22 USC 2396(a)(3)), the Contractor is generally an employee of the United States for purposes of laws other than those administered by the Office of Personnel Management (i.e., Title 5, United States Code). This includes being an employee of the United States for purposes of Title 26, United States Code, which subjects the Contractor to withholding for both FICA and Federal Income Tax, and precludes the Contractor from receiving the federal earned income tax exclusion of 26 USC Section 911.

(Fill in Appropriate Spaces)

This Contract consists of this Cover Page, the Schedule of ________ pages, including the Table of Contents, the General Provisions Section 11 and Section 12 FAR Clauses by reference.

	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By (Signature of Contracting Officer)
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36A (4/92)

BILLING CODE 6116-01-C

Privacy Act Statement

This information is provided pursuant to Public Law 93–579 (Privacy Act of 1974), December 31, 1974, for individuals who complete this form.

The Executive Office of the President, Office of Management and Budget has required that all departments and agencies comply with the reporting requirements of Section 6041 of the Internal Revenue Code. Section 6041 states that all departments and agencies making payments totalling $600.00 or more in one year to a recipient for services provided must be reported to the Internal Revenue Service (IRS). The SSN and all financial numbers will be disclosed to Agency for International Development (AID) payroll office personnel and personnel in the Department of the Treasury, Division of Disbursements. AID will use this SSN to complete Form W–2 of the Code on employee compensation. Disclosure by the personal services contractor of the SSN is necessary to obtain the services, benefits or processes provided by this contract. Disclosure of the SSN may be made outside AID (a) pursuant to any applicable routine use listed in AID's Notice for Implementing the Privacy Act as published in the **Federal Register**, or (b) when disclosure by virtue of a contract being a public document after signatures is authorized under the Freedom of Information Act.

Table of Contents

For each tour of duty, attach the applicable General Provisions.

Schedule: (Note: Use of the following Schedule Articles are not mandatory. They are intended to serve as guidelines for contracting offices in drafting contract schedules. Article language may be changed to suit the needs of the particular contract).

Article I—Statement of Duties

(The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Any AID consultation or orientation.)

Article II—Period of Service Overseas

Within ________ days after written notice from the Contracting Officer that all clearances, including the doctor's certification required under General Provisions Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to ________ where he/she shall promptly commence performance of the duties specified above. The contractor's period of service overseas shall be approximately ________ in ________. (Specify time of duties in each location as well as authorized stopovers with purpose of each.)

Article III—Contractor's Compensation and Reimbursement in U.S. Dollars

A. Except to the extent reimbursement therefor is payable in the currency of the Cooperating Country pursuant to Article IV, AID shall pay the contractor compensation after it has accrued and reimburse him/her in U.S. dollars for necessary and reasonable costs actually incurred by him/her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately ________ (days) (weeks) (months) (years) which is to include:

(1) vacation, sick, and home leave which may be earned during the contractor's tour of duty (GP Clause 5);

(2) ________ days for authorized travel (GP Clause 10); and

(3) ________ days for orientation and consultation in the United States (GP Clause 23).

C. Allowable Costs: 1. Compensation at the rate of $__________ per (year) (month) (week) (day). Adjustments in compensation (pay) for periods when the contractor is not in compensable pay status shall be calculated as follows: Rate of $__________ per (day) (hour).

Contingency for Compensation (Pay Comparability) Adjustments. $__________.

Annual Salary increase (3%) __________.

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.) $__________.

[1] 3. Overseas Differential (Ref. GP Clause No. 6.) Rate ______________ and Contingency $______________ $______________

[2] 4. Allowances in Cooperating Country (Ref. GP Clause 6.)

[2] 5. Travel and Transportation (Ref. GP Clause 10.) (Includes the value of GTRs furnished by the Government, not payable to contractor). $______________

a. United States $______________

b. International $______________

c. Cooperating and Third Country $______________

Subtotal Item 5 $______________

[2] 6. Subsistence or Per Diem (Ref. GP Clause 10.)

a. United States $______________

b. International $______________

c. Cooperating and Third Country $______________

Subtotal Item 6 $______________

7. Other Direct Costs.

a. Health and Life Insurance (Ref. GP Clause 9.) $______________

b. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 8.) $______________

c. Physical Examination (Ref. GP Clause 3.) $______________

d. Communications, Miscellaneous. $______________

Subtotal Item 7 $______________

8. F.I.C.A.—U.S.C. contribution (not payable to contractor). $______________

D. Maximum U.S.-Dollar Obligation:

In no event shall the maximum U.S.-dollar obligation under this contract, exceed $______________. Contractor shall keep a close account of all obligations he/she incurs and accrues hereunder and promptly notify the Contracting Officer whenever in his/her opinion the said maximum is not sufficient to cover all compensation and costs reimbursable in U.S. dollars which he/she anticipates under the contract.

Total estimated costs (lines 1 thru 8). $______________

Article IV—Costs Reimbursable and Logistic Support

A. General: The contractor shall be provided with or reimbursed in local currency (______________) for the following:

[Complete]

B. Method of Payment of Local Currency Costs: Those contract costs which are specified as local currency costs in paragraph A above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provision Clause 11. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

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[1] If post differential is applicable to the assigned post, a contingency for the adjusted amount of differential resulting from compensation (pay comparability) adjustment should be included.

[2] Do not include the value of any costs to be paid or reimbursed in local currency.

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

(Additional Schedule clauses may be added such as the implementation of General Provisions or Additional Clauses.)

Appendix D

Section 11

General Provisions

Contract with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad.

Appendix D

Section 11

General Provisions

Contract with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad.

The following clauses are to be used (when applicable), for both tours of duty of less than 1 year as well as 1 year or more.

Index of Clauses

1. Definitions
2. Compliance with Laws and Regulations Applicable Abroad
3. Physical Fitness and Health Room Privileges
4. Workweek and Compensation (Pay Comparability Adjustments)
5. Leave and Holidays
6. Differential and Allowances
7. Social Security, Federal Income Tax, and Foreign Earned Income
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Conversion of U.S. Dollars to Local Currency
13. Post of Assignment Privileges
14. Security Requirements
15. Contractor-Mission Relationships
16. Termination
17. Release of Information
18. Notices
19. Reports
20. Use of Pouch Facilities
21. Biographical Data
22. Resident Hire PSC
23. Orientation and Language Training
24. Conditions for Contracting Prior to Receipt of Security Clearance
25. Medical Evacuation Services

1. Definitions (June 1990)

(a) "AID" shall mean the Agency for International Development.

(b) "Administrator" shall mean the Administrator or the Deputy Administrator of AID.

(c) "Contracting Officer" shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) "Contractor" shall mean the individual engaged to serve under this contract.

(e) "Cooperating Country" shall mean the foreign country in or for which services are to be rendered hereunder.

(f) "Cooperating Government" shall mean the government of the Cooperating Country.

(g) "Government" shall mean the United States Government.

(h) "Local currency" shall mean the currency of the Cooperating Country.

(i) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(j) "Mission Director" shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(k) "Project Officer" shall mean the AID official to whom the contractor reports, and who is responsible for monitoring the contractor's performance.

(l) "Tour of duty" shall mean the contractor's period of service under this contract and shall include orientation in the United States (less language training), authorized leave, and international travel.

(m) "Traveler" shall mean (i) The contractor in authorized travel status or (ii) dependents of the contractor who are in authorized travel status.

(n) "Dependents" means:

(1) Spouse.

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

(3) Parents (including step and legally adoptive parents) of the employee or of the spouse, when such parents are at least 51 percent dependent on the contractor for support.

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the contractor, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the contractor for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

(o) "U.S. Resident Alien", as used in this contract, shall mean an alien immigrant, legally resident in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and having a valid "Alien Registration and Receipt Card" (Immigration and Naturalization Service forms I–151 or I–551).

(p) "Resident Hire Personal Services Contractor (PSC)" means a U.S. citizen who, at the time of hiring as a PSC, resides in the Cooperating Country:

(1) as a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or

(2) for reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes a person who at the time of contracting, is a lawfully admitted permanent resident of the United States.

2. Compliance With Laws and Regulations Applicable Abroad (July 1993)

(a) *Conformity to Laws and Regulations of the Cooperating Country.* Contractor agrees that, while in the cooperating country, he/she as well as authorized dependents will abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase or Sale of Personal Property or Automobiles.* To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) *Code of Conduct.* The contractor shall, during his/her tour of duty under this contract, be considered an "employee" (or if his/her tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions, of 18 U.S.C. 202(a) and the AID General Notice entitled "Employee Review of the New Standards of Conduct" pursuant to 5 CFR part 2635. The contractor acknowledges receipt of a copy of these documents by his/her acceptance of this contract.

3. Physical Fitness and Health Room Privileges (July 1993)

(a) *Physical Fitness.* (1) For all assignments, the contractor and any authorized dependents shall be required to be examined by a licensed doctor of medicine, and the contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the contractor is physically able to engage in the type of activity for which he/she is to be employed under the contract, and the contractor and any dependents are physically able to reside in the Cooperating Country. A copy of the certificate(s) shall be provided to the Contracting Officer prior to the contractor's departure for the Cooperating Country, or for a resident hire, before he/she starts work under the contract.

(2) For assignments of 60 days or more in the Cooperating Country, the Contracting Officer shall provide the contractor and all authorized dependents copies of the "AID Contractor Employee Physical Examination Form". This form is for collection of information; it has been reviewed and approved by OMB, and assigned Control No. 0412–0536. Information required by the Paperwork Reduction Act (burden estimate, points of contract, and OMB approval expiration date) is printed on the form. The contractor and all authorized dependents shall obtain a physical examination from a licensed physician, who will complete the form for each individual. The contractor will deliver the physical examination form(s) to the embassy health unit in the Cooperating Country. A copy of the doctor's certification at the end of the form which identifies the contractor or dependent by name may be used to meet the requirement in (a)(1) of this clause.

(b) *Reimbursement.* (1) As a contribution to the cost of medical examinations required by paragraph (a)(1) of this clause, AID shall reimburse the contractor not to exceed $100 for the physical examination, plus reimbursement of charges for immunizations.

(2) As a contribution to the cost of medical examinations required by paragraph (a)(2) of this clause the contractor shall be reimbursed in an amount not to exceed half of the cost of the examination up to a maximum AID share of $300, plus reimbursement of charges for immunizations for the contractor and all authorized dependent 12 years of age or under. The contractor must obtain the prior written approval of the Contracting Officer to receive any AID contributions higher than these limits.

(c) *Health Room Privileges*. Routine health room services may be available, subject to post policy and in accordance with the requirements of paragraph (a) of this clause, to U.S. citizen contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, and home visits as medically indicated. Emergency medical treatment is provided to U.S. citizen contractor employees and dependents, whether or not they may have been granted access to routine health room services, on the same basis as it would be to any U.S. citizen in an emergency medical situation in the country.

4. Workweek and Compensation (Pay Comparability Adjustments) (Dec. 1985)

(a) *Workweek*. The contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Contract Schedule, and shall coincide with the workweek for those employees of the Mission or the Cooperating Country agency most closely associated with the work of this contract. If the contract is for less than full time (40 hours weekly), the annual and sick leave earned shall be prorated (see the General Provision of this contract entitled Leave and Holidays).

(b) *Compensation (Pay Comparability) Adjustments*. The contractor's compensation shall be adjusted to reflect the pay comparability adjustments which are granted from time to time to U.S. direct-hire employees by Executive Order for the statutory pay systems. Any adjustments authorized are subject to the availability of Mission funds and shall not exceed that percentage stated in the Executive Order granting the adjustment. Further, the adjusted compensation may not exceed the maximum FS–1 annual compensation (or the equivalent daily rate).

5. Leave and Holidays (July 1993)

(a) *Vaction Leave*. (1) The contractor shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) Notwithstanding paragraph (a)(1) above, if the contractor has had previous PSC service (i.e., has served under other personal services contracts (PSCs) covered by Sec. 636(a)(3) of the FAA), he/she shall earn vacation leave at the rate of either 6 hours every two weeks for cumulative PSC service exceeding 3 years, or 8 hours every two weeks for cumulative PSC service exceeding 15 years. Former Civil Service, Foreign Service, or a Military Service experience is not creditable toward PSC service for annual leave purposes.

(3) It is understood that vacation leave is provided under this contract primarily for the purposes of affording necessary rest and recreation during the tour of duty in the Cooperating Country. The contractor in consultation with the AID Mission shall develop a vacation leave schedule early in his/her tour of duty taking into consideration project requirements, employee preference and other factors. All vacation leave earned by the contractor must be used during his/her tour of duty. All vacation leave earned by the contractor but not taken by the end of his/her tour of duty will be forfeited unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(3) of this clause, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve month period.

(4) With the approval of the Mission Director, and if the circumstances warrant, a contractor may be granted advance vacation leave in excess of that earned, but in no case shall a contractor be granted advance vacation leave in excess of that which he/she will earn over the life of the contract. The contractor agrees to reimburse AID for leave used in excess of the amount earned during the contractor's assignment under the contract.

(b) *Sick Leave*. Sick leave is earned at a rate not to exceed 13 workdays per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension of this contract but the contractor will not be compensated for unused sick leave at the completion of this contract.

(c) *Home Leave*. (1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A contractor who is a U.S. citizen or U.S. resident alien and has served at least 2 years overseas, as defined in paragraph (c)(4) of this clause, under this contract, and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 workdays for each such year of service overseas; provided, that the contractor agrees to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2) of this clause, that the contractor must have served 2 years overseas under this contract to be eligible for home leave, the contractor may be granted advance home leave subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The contractor shall have served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The contractor shall have agreed to return to the Cooperating Country to serve out the remainder of his/her current tour of duty and an additional 2 year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the U.S. port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the U.S. port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The contractor will be responsible for reimbursing AID for payments made during home leave if, in spite of the undertaking of the new appointment, the contractor, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contracting Officer, a contractor in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at AID/Washington before returning to post of duty. Consultation at locations other than AID/Washington as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(d) *Holidays*. The contractor, while serving abroad, shall be entitled to all holidays granted by the Mission to U.S.-citizen direct-hire employees.

(e) *Military Leave*. Military leave of not more than 15 calendar days in any calendar year may be granted to a contractor who is a reservist of the Armed Forces, provided that military leave has been approved in advance by the Contracting Officer or the

Mission Director. A copy of any such approval shall be provided to the Contracting Officer.

(f) *Leave Without Pay*. Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(g) *Leave Records*. The contractor shall maintain current leave records for himself/herself and make them available, as requested by the Mission Director or the Contracting Officer.

6. Differential and Allowances (June 1990)

(a) The following differential and allowances will be granted to the contractor and his/her authorized dependents to the same extent and on the same basis as they are granted to U.S. citizen direct-hire employees at the Mission by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended, except as noted to the contrary below:

	Applicable reference to standardized regulations
(1) Post Differential ...	Chapter 500 and Tables in Chapter 900.
(2) Living Quarters Allowance.	Section 130.
(3) Temporary Lodging Allowance.	Section 120.
(4) Post Allowance	Section 220.
(5) Supplemental Post Allowance.	Section 230.
(6) Payments During Evacuation.	Section 600.
(7) Educational Allowance.	Section 270.
(8) Separate Maintenance Allowance.	Section 260.
(9) Danger Pay Allowance.	Section 650.
(10) Education Travel	Section 280.

(1) Post Differential

Post differential is an additional compensation of service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to AID direct-hire employees, post differential not to exceed the percentage of salary as is provided such AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas) Chapter 500 (except the limitation contained in Section 552, "Ceiling on Payment") Tables-Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. When such post differential is provided to the contractor, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment en route to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his/her post of assignment for purposes of home leave. Short-term employees shall be entitled to post differential beginning with the forty-third (43rd) day at post.

(2) Living Quarters Allowance

Living quarters allowance is an allowance granted to reimburse an employee for substantially all of his/her cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him/her at his/her post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time. The contractor will receive living quarters allowance for payment of rent and utilities if such facilities are not supplied. Such allowances shall not exceed the amount paid AID employees of equivalent rank in the Cooperating Country, in accordance with either the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended, or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allowance) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director shall consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government, and similar factors.

(3) Temporary Lodging Allowance

Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his/her family for a period not in excess of (i) three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) one month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The contractor will receive temporary lodging allowance for himself/herself and authorized dependents, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(4) Post Allowance

Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington, DC. The contractor will receive post allowance payments not to exceed those paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(5) Supplemental Post Allowance

Supplemental post allowance is a form of post allowance granted to an employee at his/her post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The contractor will receive supplemental post allowance payments not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(6) Payments During Evacuation

The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director, the contractor will receive payments during evacuation for himself/herself and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the Federal Travel Regulations, as from time to time amended.

(7) Educational Allowance

Educational allowance is an allowance to assist the contractor in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of his/her service in a foreign area in providing adequate elementary and secondary education for his/her children. The contractor will receive educational allowances payments for his/her dependent children in amounts not to exceed those set forth in Standardized Regulations (Government Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(8) Separate Maintenance Allowance

Separate maintenance allowance is an allowance to assist an employee who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his/her post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining his/her dependents elsewhere than at such post. The contractor will receive separate maintenance allowance payments not to exceed that made to AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign

Areas), Chapter 260, as from time to time amended.

(9) Danger Pay Allowance

Danger pay allowance is an allowance to provide additional compensation above basic compensation to employees in foreign areas where civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well-being of the employee. The danger pay allowance is in lieu of that part of the post differential which is attributable to political violence. Consequently, the post differential may be reduced while danger pay is in effect to avoid dual crediting for political violence. The contractor shall be allowed danger pay allowance not to exceed that paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 650, as from time to time amended.

(10) Educational Travel

Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The contractor will receive educational travel payments for his/her dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel shall not be authorized for contractors whose assignment is less than two years.

The allowances provided in paragraphs 1 through 10 of this provision shall be paid to the contractor in dollars or in the currency of the Cooperating Country in accordance with practice prevailing at the Mission, or the Mission Director may direct that the contractor be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

7. Social Security, Federal Income Tax, and Foreign Earned Income (June 1990)

(a) Since the contractor is an employee, F.I.C.A. contributions and U.S. Federal Income Tax withholding shall be deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service, respectively.

(b) As an employee, the contractor is not eligible for the "foreign earned income" exclusion under the IRS Regulations (see 26 CFR 1.911–3(c)(3)).

8. Advance of Dollar Funds (Dec 1985)

If requested by the contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

9. Insurance (June 1990)

(a) *Worker's Compensation Benefits*. The contractor shall be provided worker's compensation benefits in accordance with the Federal Employees' Compensation Act.

(b) *Health and Life Insurance*. (1) The contractor shall be provided a maximum contribution of up to 50% against the actual costs of the contractor's annual health insurance costs, provided that such costs may not exceed the maximum U.S. Government contribution for direct-hire personnel as announced annually by the Office of Personnel Management.

(2) The contractor shall be provided a contribution of up to 50% against the actual costs of annual life insurance not to exceed $500.00 per year.

(3) Retired U.S. Government employees shall not be paid additional contributions for health or life insurance under their contracts. The Government will normally have already paid its contribution for the retiree unless the employee can provide to the satisfaction of the Contracting Officer that his/her health and life insurance does not provide or specifically excludes coverage overseas. If excluded coverage overseas were the case, then eligibility as cited above would be applicable.

(4) Proof of health and life insurance coverage shall be submitted to the Contracting Officer before any contribution is paid.

On assignments of less than one year, costs for health and life insurance shall be prorated and paid accordingly.

(5) A contractor who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraphs (a)(1) or (a)(2) of this provision.

(c) *Insurance on Private Automobiles*.

If the contractor or his/her dependents transport, or cause to be transported, privately owned automobile(s) to the Cooperating Country, or any of them purchase an automobile within the Cooperating Country, the contractor agrees to ensure that all such automobile(s) during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the Cooperating Country: Injury to persons, $10,000/$20,000; property damage, $5,000. The contractor further agrees to deliver, or cause to be delivered to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the Cooperating Country. The premium costs for such insurance shall not be a reimbursable cost under this contract.

10. Travel and Transportation Expenses (July 1993)

(a) *General*. (1) AID/Washington Office of Administrative Services, or such other office as may be designated by that office, may furnish Transportation Requests (TR's) to the contractor for transportation authorized by this contract originating in the United States, and the executive or administrative officer at the Mission may furnish TR's for such authorized transportation which is payable in local currency or is to originate overseas. When transportation is not provided by the Government-issued TR, the contractor shall procure his/her own transportation, the costs of which will be reimbursed in accordance with the terms of this contract.

(2) The contractor will be reimbursed for reasonable, allocable and allowable travel and transportation expenses incurred under and for the performance of this contract. Determination of reasonableness, allocability and allowability will be made by the Contracting Officer in accordance with AID's established policies and procedures for AID direct-hire employees, and the particular needs of the project being implemented by this contract. Paragraphs (b) through (o) of this clause provide specific guidance and limitations on particular items of cost.

(b) *U.S. Travel and Transportation*. The contractor shall be reimbursed for actual transportation costs and travel allowances in the United States as authorized in the Contract Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercially scheduled air travel by the most expeditious route except as otherwise provided in paragraph (g) of this provision unless economy air travel is not available and the contractor certifies to this in his/her voucher or other documents submitted for reimbursement.

(c) *International Travel*. For travel to and from post of assignment, the contractor shall be reimbursed for travel costs and travel allowances from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of the travel from the contractor's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the contractor's residence) upon completion of services by the individual. Reimbursement for travel will be in accordance with AID's established policies and procedures for its direct-hire employees and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route. If the contract is for longer than one year and the contractor does not complete one full year at post of duty (except for reasons beyond his/her control), the costs of going to and from the post of duty for the contractor and his/her dependents are not reimbursable hereunder. If the contractor serves more than one year but less than the required service in the Cooperating Country (except for reasons beyond his/her control) the costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the contractor's permanent, legal place of residence at the time he or she was employed for work under this contract, or other location as approved by the Contracting Officer, are not reimbursable under this contract for the contractor and his/her dependents. When travel is by economy class accommodations, the contractor will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers shall not be in excess of the rates authorized in the Standardized Regulations (Government Civilians, Foreign Areas)—hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Federal Travel Regulations as from time to time amended.

(d) *Local Travel*. Reimbursement for local travel in connection with duties directly referable to the contract shall not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the contractor shall be reimbursed for actual travel costs in the Cooperating Government or the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(e) *Indirect Travel for Personal Convenience*. When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by the United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(f) *Limitation on Travel by Dependents*. Travel costs and allowances will be allowed for authorized dependents of the contractor and such costs shall be reimbursed for travel from place of abode to assigned station in the Cooperating Country and return, only if the dependent remains in the Cooperating Country for at least 9 months or one-half of the required tour of duty of the contractor, whichever is greater, except as otherwise authorized hereunder for education, medical or emergency visitation travel. If the dependent is eligible for educational travel pursuant to the "Differential and Allowances" clause of this contract, time spent away from post resulting from educational travel will be counted as time at post.

(g) *Delays En Route*. The contractor may be granted reasonable delays en route while in travel status when such delays are caused by events beyond the control of the contractor and are not due to circuitous routing. It is understood that if delay is caused by physical incapacitation, he/she shall be eligible for such sick leave as provided under the "Leave and Holidays" clause of this contract.

(h) *Travel by Privately Owned Automobile (POV)*. If travel by POV is authorized in the contract schedule or approved by the Contracting Officer, the contractor shall be reimbursed for the cost of travel performed in his/her POV at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and for each of the authorized dependents traveling in the POV, if the POV is being driven to or from the Cooperating Country as authorized under the contract, provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever is less.

(i) *Emergency and Irregular Travel and Transportation*.

Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for AID-direct hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location for contractor employees and dependents and returning to the post of duty, subject to the prior written approval of the Mission Director that such travel is necessary for one of the following reasons.

(i) Need for medical care beyond that available within the area to which the employee is assigned, or serious effect on physical or mental health if residence is continued at assigned post of duty. The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(ii) Death, or serious illness or injury of a member of the immediate family of the employee or the immediate family of the employee's spouse.

(2) When, for any reason, the Mission Director determines it is necessary to evacuate the contractor or contractor dependents, the contractor will be reimbursed for travel and transportation expenses and travel allowance while en route, for the cost of the individuals going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other approved location. The return of such employees and dependents may also be authorized by the Mission Director when, in his/her discretion, he/she determines it is prudent to do so.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations, when in his/her opinion, the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and household effects, etc.

(j) *Home Leave Travel*. To the extent that home leave has been authorized as provided in the "Leave and Holidays" clause of this contract, the cost of travel for home leave is reimbursable for travel costs and travel allowances of travelers from the post of duty in the Cooperating Country to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel to the contractor's residence in the United States) and return to the post of duty in the Cooperating Country. Reimbursement for travel will be in accordance with the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended, and will be limited to the cost of travel by the most direct and expeditious route. Travel allowances for travelers shall be accordance with the rates authorized in the Standardized Regulations as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Standardized Regulations.

(k) *Rest and Recuperation Travel*. If approved in writing by the Mission Director, the contractor and his/her dependents shall be allowed rest and recuperation travel on the same basis as authorized AID direct-hire Mission employees and their dependents.

(l) *Transporation of Motor Vehicles, Personal Effects and Household Goods*.

(1) Transportation costs will be paid on the same basis as for AID direct-hire employees serving the same length tour of duty, as authorized in the schedule. Transportation, including packing and crating costs, will be paid for shipping from the point of origin in the United States (or other location as approved by the Contracting Officer) to post of duty in the Cooperating Country and return to point of origin in the United States (or other location as approved by the Contracting Officer) of one privately-owned vehicle for the contractor, personal effects of the contractor and authorized dependents, and household goods of the contractor not to exceed the limitations in effect for such shipments for AID direct-hire employees in accordance with the Foreign Service Travel Regulations in effect at the time shipment is made. These limitations may be obtained from the Contracting Officer.

(2) The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the Cooperating Country, the cost of boxing or

crating is not reimbursable. The transportation of a privately owned motor vehicle for a contractor may be authorized as a replacement of the last such motor vehicle shipped under this contract for such contractor when the Mission Director determines, in advance, and so notifies the contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the contractor. The determination shall be made under the same rules and regulations that apply to authorized Mission U.S. citizen direct-hire employees.

(m) *Unaccompanied Baggage.* Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival of the contractor and dependents, consideration should be given to advance shipments of unaccompanied baggage. The contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance for household effects) not to exceed the limitations in effect for AID direct-hire employees in accordance with the Foreign Service Travel Regulations as in effect when shipment is made. These limitations are available from the Contracting Officer. This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used. This provision is applicable to home leave travel when authorized by the terms of this contract.

(n) *International Ocean Transportation.*

(i) *Transportation of things.* Where U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may obtain a release from the requirement to use U.S. flag vessels from the Transportation Division, Office of Procurement, Agency for International Development, Washington, DC 20523–1419, or the Mission Director, as appropriate, giving the basis for the request.

(ii) *Transportation of persons.* Where U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may obtain a release from the requirement to use U.S. flag vessels from the Contracting Officer or the Mission Director, as appropriate.

(2) *Transportation of foreign-made vehicles.* Reimbursement of the costs of transporting a foreign-made motor vehicle will be made in accordance with the provisions of the Foreign Service Travel Regulations.

(3) Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of AID contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(o) *Storage of household effects.* The cost of storage charges (including packing, crating, and drayage costs) in the U.S. of household goods of the contractor will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (l) of this clause provided that the total amount of effects shipped to the Cooperating Country or stored in the U.S. shall not exceed the amount authorized for AID direct-hire employees under the Uniform Foreign Service Travel Regulations. These amounts are available from the Contracting Officer.

11. Payment (June 1990)

(a) Once each month (or at more frequent intervals, if approved by the paying office indicated on the Cover Page), the contractor may submit to such office form SF 1034 "Public Voucher for Purchases and Services Other Than Personal" (original) and SF 1034–A (three copies), each voucher identified by the AID contract number properly executed in the amount of dollars claimed during the period covered. The voucher forms shall be supported by:

(1) The contractor's detailed invoice, in original and two copies, indicating for each amount claimed the paragraph of the contract under which payment is to be made, supported when applicable as follows:

(ii) For compensation—a statement showing period covered, days worked, and days when contractor was in authorized travel, leave, or stopover status for which compensation is claimed. All claims for compensation will be accompanied by, or will incorporate, a certification signed by the Project Officer covering days or hours worked, or authorized travel or leave time for which compensation is claimed.

(ii) For travel and transportation—a statement of itinerary with attached carrier's receipt and/or passenger's coupons, as appropriate.

(iii) For reimbursable expenses—an itemized statement supported by original receipts.

(2) The first voucher submitted shall account for, and liquidate the unexpended balance of, any funds advanced to the contractor.

(b) A final voucher shall be submitted by the contractor promptly following completion of the duties under this contract but in no event later than 120 days (or such longer period as the Contracting Officer may in his/her discretion approve in writing) from the date of such completion. The contractor's claim, which includes his/her final settlement of compensation, shall not be paid until after the performance of the duties required under the terms of this contract has been approved by AID. On receipt and approval of the voucher designated by the contractor as the "final voucher" submitted on form SF 1034 (original) and SF 1034–A (three copies), together with a refund check for the balance remaining on hand of any funds which may have been advanced to the contractor, the Government shall pay any amounts due and owing the contractor.

(c) Interest on Overdue Payments

(1) The Prompt Payment Act, Public Law 97–177 (96 Stat. 85.31; U.S.C. 1801) is applicable to payments under this contract and requires the payment to the contractor of interest on overdue payments and improperly taken discounts.

(2) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A–125 except as provided in paragraph (c)(3) of this claim or as otherwise specifically provided under this contract.

(3) Notwithstanding the provisions of OMB Circular A–125, Section 4.1, the Government will use its best efforts to make payments under this contract as soon as practicable following receipt of a proper invoice.

12. Conversion of U.S. Dollars to Local Currency (Dec 1985)

Upon arrival in the Cooperating Country, and from time to time as appropriate, the contractor shall consult with the Mission Director or his/her authorized representative who shall provide, in writing, the policy the contractor shall follow in the conversion of U.S. dollars to local currency.

This may include, but not be limited to the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

13. Post of Assignment Privileges (July 1993)

Privileges such as the use of APO, PX's commissaries and officer's clubs are established at posts abroad under agreements between the U.S. and host governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans. However, in those cases where facilities are open to non-official Americans, they may be used.

14. Security Requirements (June 1990)

(a) This entire provision shall apply to the extent that this contract involves access to classified information ("Confidential", "Secret", or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with appropriate instructions furnished by the AID Office of Security (IG/SEC), as referenced in paragraph (d) of this provision and shall not supply, disclose, or otherwise permit access to classified information or administratively controlled information to any unauthorized person; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information except with the prior written authorization of the Contracting Officer or Mission Director; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified and/or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storing, and destroying official material in accordance with the regulations in the Foreign Affairs Manual, Chapter 5 (5 FAM 900), a copy of which will be furnished by the Contracting Officer or Mission Director.

(d) The contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, appropriately classified, of any information which the contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(e) The Government agrees that, when necessary, it shall indicate by security classification or administratively controlled designation, the degree of importance to the national defense of information to be furnished by the contractor to the Government or by the Government to the contractor, and the Government shall give written notice of such security classification or administratively controlled designation to the contractor and of any subsequent changes thereof. The contractor is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(f) The contractor agrees to certify after completion of his/her assignment under this contract that he/she has surrendered or disposed of all classified and/or administratively controlled information in his/her custody in accordance with applicable security instructions.

15. Contractor-Mission Relationships (Dec 1985)

(a) The Contractor acknowledges that this contract is an important part of the U.S. Foreign Assistance Program and agrees that his/her duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) While in the Cooperating Country, the contractor is expected to show respect for the conventions, customs, and institutions of the Cooperating Country and not interfere in its political affairs.

(c) If the contractor's conduct is not in accordance with paragraph (b) of this provision, the contract may be terminated under General Provision 16 of this contract. The Contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(d) The Mission Director is the chief representative of AID in the Cooperating Country. In this capacity, he/she is responsible for the total AID Program in the Cooperating Country including certain administrative responsibilities set forth in this contract and for advising AID regarding the performance of the work under the contract and its effect on the U.S. Foreign Assistance Program. The contractor will be responsible for performing his/her duties in accordance with the statement of duties called for by the contract. However, he/she shall be under the general policy guidance of the Mission Director, and shall keep the Mission Director or his/her designated representative currently informed of the progress of the work under this contract.

16. Termination (Nov 1989)

(This is an approved deviation to be used in place of the clause specified in FAR 52.249–12)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

(1) For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the contractor in the event (i) the Contractor commits a breach or violation of any obligations herein contained, (ii) a fraud was committed in obtaining this contract, or (iii) the contractor is guilty (as determined by AID) of misconduct in the Cooperating Country. Upon such a termination, the contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the contractor performs services hereunder, whichever is earlier. No costs of any kind incurred by the contractor after the date such notice is delivered shall be reimbursed hereunder except the cost of return transportation (no including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been paid by AID, the contractor shall promptly refund to AID any such prepayment as directed by the Contracting Officer.

(2) For the convenience of AID, by giving not less than 15 calendar days advance written notice to the contractor. Upon such a termination, contractor's right to compensation shall cease when the period specified in such notice expires except that the contractor shall be entitled to return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rates specified in the contract and subject to the limitations which apply to authorized travel status.

(3) For the convenience of AID, when the contractor is unable to complete performance of his/her services under the contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The contract shall be deemed terminated upon delivery to the Contractor of a termination notice. Upon such a termination, the contractor shall not be entitled to compensation except to the extent of any unused vacation or sick leave but shall be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the contract and subject to the limitations which apply to authorized travel status.

(b) The contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

17. Release of Information (Dec 1985)

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this contract by the contractor and all reports and recommendations hereunder shall be treated as confidential by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this contract.

18. Notices (Dec 1985)

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To AID: Administrator, Agency for International Development, Washington, DC 20523, Attention: Contracting Officer.

(name of the cognizant Contracting Officer with a copy to the appropriate Mission Director)

To Contractor:

As his/her post of duty while in the Cooperating Country and at the Contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice, whichever is later.

19. Reports (June 1987)

(a) The Contractor shall prepare and submit 2 copies of each technical report required by the schedule of this contract to the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division (PPC/CDIE/DI). All documents should be mailed to:

PPC/CDIE/DI, Acquisitions, room 209, SA–18, Agency for International Development, Washington, DC 20523–1802.

The title page of all reports forwarded to PPC/CDIE/DI pursuant to this paragraph shall include a descriptive title, the author's name(s), contract number, project number and title, contractor's name, name of the AID project office, and the publication or issuance date of the report.

(b) When preparing reports, the contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages should be printed on both sides using single spaced type.

20. Use of Pouch Facilities (July 1993)

(a) Use of a diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID contractors and their employees as a general policy, as detailed in paragraph (a)(1) through (a)(6) of this provision. However, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities are hereinafter stated, the Contractor agrees to indemnify and hold harmless the Department of State and AID for loss or damage occurring in pouch transmission.

(1) Contractors are authorized use of the pouch for transmission and receipt of up to

a maximum of 0.90 kilogram/2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen contractors are authorized use of the pouch for personal mail up to a maximum of 0.45 kilogram/one pound per shipment (but see paragraph (a)(3) of this clause). Non-U.S. citizen Contractors are not permitted use of the pouch for personal mail except to the extent that such use may be authorized by the Chief of Mission.

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official and personal mail under paragraphs (a) (1) and (2) of this provision, sent by pouch, should be addressed as follows:

Individual's Name (C), Agency for International Development, Washington, DC 20523–0001.

(5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(6) AID contractors hired in the United States are authorized use of military postal facilities (APO/FPO). Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch, may, however, accept official and personal mail for the pouch provided, of course, adequate postage is affixed when onward transmission (mail to other than AID/W) through U.S. postal channels is required.

(b) The contractor shall be responsible for compliance with these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

21. Biographical Data (June 1990)

(a) The contractor agrees to furnish biographical information to the Contracting Officer, on forms (SF 171 and 171As) provided for that purpose.

(b) Emergency locator information. The contractor agrees to provide the following information to the Mission Administrative Officer on arrival in the host country regarding himself/herself and dependents:

(1) Contractor's full name, home address, and telephone number including any after-hours emergency number(s).

(2) The name and number of the contract, and whether the individual is the contractor or the contractor's dependent.

(3) The name, address, and home and office telephone number(s) of each individual's next of kin.

(4) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

22. Resident Hire Personal Services Contractor (June 1990)

A contractor meeting the definition of a Resident Hire PSC contained in Section 11, General Provisions, Clause 1, Definitions, shall not be eligible for any fringe benefits (except contributions for FICA, health insurance and life insurance), allowances, or differentials, including but not limited to travel and transportation, medical, orientation, home leave, etc., unless such individual can demonstrate to the satisfaction of the Contracting Officer that he/she has received similar benefits/allowances from their immediately previous employer in the Cooperating Country, or the Mission Director determines that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

23. Orientation and Language Training (Long Tour) (July 1993)

(a) Except as set forth in paragraph (b)(4) of this clause, the Contractor shall receive a maximum of 2 weeks AID orientation before travel overseas. The dates of orientation shall be selected by the Contractor and approved by the Contracting Officer from the orientation schedule provided by AID.

(b) As either set forth in the Contract Schedule, or provided in writing by the Contracting Officer, the following may be authorized taking into consideration specific job requirements, contractor's prior overseas experience, or unusual circumstances, in connection with orientation of individual Contractors:

(1) Modified orientation,

(2) Language training,

(3) Orientation for Contractor's dependents at contract expense,

(4) Waiver of orientation for individual contractor.

(c) Transportation costs and travel allowances not to exceed one round trip from the Contractor's residence to place of orientation and return will be reimbursed, pursuant to Clause 10 of the General Provisions, entitled "Travel and Transportation Expenses," if the orientation is more than 80 kilometers/50 miles from the contractor's residence. Allowable salary costs during the period of orientation are also reimbursable.

24. Conditions for Contracting Prior to Receipt of Security Clearance (July 1993)

(a) Resident Hire U.S. PSC. The contractor may commence work prior to the completion of the security clearance. However, until such time as clearance is received, the contractor shall have no access to classified or administratively controlled materials. Further, failure to obtain clearance will constitute cause for contract termination in accordance with paragraph (a)(2) of General Provision 16 of this contract.

(b) U.S. PSC—Non-Resident Hire. The contractor may elect to commence travel to post immediately to begin work prior to completion of the security clearance. However, until such time as security clearance is received, the contractor shall:

(1) Have no access to classified or administratively controlled materials;

(2) Be authorized to travel to post himself/herself only; and

(3) Be authorized no entitlements other than those normally authorized for short term (less than a year) employees at post. Even if the contract is for one year or more, dependents may not accompany contractor unless at his/her expense, and transportation/storage of household/personal effects and motor vehicle will not be financed by AID prior to the receipt of the security clearance. Upon receipt of clearance, the Contracting Officer will authorize reimbursement of any such costs borne at contractor's expense prior to clearance provided they are reasonable, allocable and allowable. If appropriate given the length of time remaining, the Contracting Officer will authorize dependent travel and shipment/storage of motor vehicle and effects. Allowances which would not be provided to short term employees will be authorized after clearance is received provided that the contractor is otherwise entitled to such benefits. Failure to obtain the security clearance will constitute cause for contract termination in accordance with paragraph (a)(2) of General Provision 16 of this contract.

25. Medical Evacuation (Medevac) Services (July 1993)

(a) The contractor agrees to obtain medevac service coverage for himself/herself and his/her authorized dependents while performing personal services abroad. Coverage shall be obtained pursuant to the terms of the contract between AID and AID's medevac service provider unless exempted in accordance with paragraph (b).

(b) The following are exempted from the requirements in paragraph (a):

(i) Contractors and their dependents with a health insurance program that includes sufficient medevac coverage as approved by the Contractor Officer.

(ii) Contractors and their dependents located at Missions where the Mission Director makes a written determination to waive the requirement for such coverage based on findings that the quality of local medical services or other circumstances obviate the need for such coverage.

(c) Information on the current medevac service provider, including application procedures, is available from the Contracting Officer.

Appendix D

Section 12

FAR Clauses

The following FAR Clauses are always to be used along with the General Provisions. They are required in full text.

1. Officials Not To Benefit 52.203–1
2. Covenant Against Contingent Fees 52.203–5
3. Disputes 52.233–1 (Alternate 1)
4. Preference for U.S.-Flag Air Carriers 52.247–63

The following FAR Clauses are to be used along with the General Provisions, and when appropriate, be incorporated in each personal services contract by reference:

1. Inspection 52.246–5.
2. Examination of Records by Comptroller General 52.215–1.
3. Audit—Negotiation 52.215–2.
4. Privacy Act Notification 52.224–1.
5. Privacy Act 52.224–2.
6. Taxes—Foreign Cost Reimbursement Contracts 52.229–8.
7. Interest 52.232–17.

8. Assignment of Claims 52.232-23.
9. Protection of Government Buildings, Equipment, and Vegetation 52.237-2.
10. Notice of Intent to Disallow Costs 52.242-1.
11. Limitation of Cost 52.232-20.
12. Limitation of Funds 52.232-22.
13. Limitation of Liability—Services 52.246-25.
14. Anti-Kickback Procedures 52.203-7.
15. Certification and Disclosure Regarding Payments To Influence Certain Federal Transactions 52.203-12.

5. Appendix J is revised as follows:

Appendix J—Direct AID Contracts With Cooperating Country Nationals and With Third Country Nationals for Personal Services Abroad

1. General

(a) *Purpose.* This appendix sets forth the authority, policy, and procedures under which AID contracts with cooperating country nationals or third country nationals for personal services abroad.

b. *Definitions.* For the purpose of this appendix:

(1) *Personal services contract* (PSC) means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees (see FAR 37.104).

(2) *Employer-employee relationship* means an employment relationship under a service contract with an individual which occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, the contractor is subject to the relatively continuous supervision and control of a Government officer or employee.

(3) *Non-personal services contract* means a contract under which the personnel rendering the services are not subject either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

(4) *Independent contractor relationship* means a contract relationship in which the contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under these relationships, the Government does not normally supervise the performance of the work, or the manner in which it is to be performed, control the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) *Contractor* means a cooperating country national or a third country national who has entered into a contract pursuant to this appendix.

(6) *Cooperating country* means the country in which the employing AID Mission is located.

(7) *Cooperating country national (CCN)* means an individual who is a cooperating country citizen or a noncooperating country citizen lawfully admitted for permanent residence in the cooperating country.

(8) *Third Country National (TCN)* means an individual (i) who is neither a citizen nor a permanent legal resident alien of the United States nor of the country to which assigned for duty, and (ii) who is eligible for return to his/her home country or country of recruitment at U.S. Government expense [see Section 12, General Provision 9 paragraph (n)].

2. Legal Basis

(a) Section 635(b) of the Foreign Assistance Act of 1961, as amended, hereinafter referred to as the "FAA", provides the Agency's contracting authority.

(b) Section 636(a)(3) of the FAA authorizes the Agency to enter into personal services contracts with individuals for personal services abroad and provides further that such individuals "* * * shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission."[1]

3. Applicability

(a) This appendix applies to all personal services contracts with CCNs or TCNs to provide assistance abroad under Section 626(a)(3) of the FAA.

(b) This appendix does not apply to:

(1) Contracts for non-personal services with TCNs or CCNs; such contracts are covered by the basic text of the FAR and AIDAR.

(2) Personal services contracts with U.S. citizens or U.S. resident aliens for personal services abroad; such contracts are covered by appendix D of this chapter.

(3) Appointments of experts and consultants as AID direct-hire employees; such appointments are covered by AID Handbook 25, Employment and Promotion.

4. Policy

(a) *General.* AID may finance, with either program or operating expense (OE) funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with a CCN or a TCN for personal services abroad.

(1) *Program funds.* Under the authority of Section 636(h) of the FAA, program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating expense funds.* Pursuant to AID budget policy, OE funded salaries and other recurrent cost items may be forward funded for a period of up to three (3) months beyond the fiscal year in which these funds were obligated. Non-recurring cost items may be forward funded for periods not to exceed twenty-four (24) months where necessary and appropriate to accomplishment of the work.

(b) *Limitations on Personal Services Contracts.* (1) Personal services contracts may only be used when adequate supervision is available.

(2) Personal services contracts may be used for commercial activities. Commercial activities provide a product or service which could be obtained from a commercial source. See Attachment A of OMB Circular A-76 for a representative list of such activities.

(3) Personal services contracts may be used for Governmental functions (defined by OMB Circular A-76 as functions so intimately related to the public interest as to mandate performance by Government employees) *except:*

(i) Entering into any agreement (e.g., loan, grant, contract) on behalf of the United States.

(ii) Making decisions involving governmental functions such as planning, budget, programming and personnel selection. Services will be limited to making recommendations with final decision-making authority reserved for authorized AID direct-hire employees.

(iii) Supervision of AID direct-hire U.S. citizen employees.

(iv) Services which involve security classified material.

(c) *Conditions of Employment.* (1) *General.* For the purpose of any law administered by the U.S. Office of Personnel Management, AID PSC contractors are not to be regarded as employees of the U.S. Government, are not included under any retirement or pension program of the U.S. Government, and are not eligible for the Incentive Awards Program covered by Uniform State/AID/USIA regulations. Each AID Mission is expected to participate in the Joint Special Embassy Incentive Awards Program. The program is administered by a joint committee which establishes procedures for submission, review and approval of proposed awards. Other than these exceptions, CCNs and TCNs who are hired for work in a cooperating country under PSCs generally will be extended the same benefits and be subject to the same restrictions as Foreign Service Nationals (FSNs) employed as direct-hires by the AID Mission.

(2) *Compensation.* (i) It is AID's general policy (see AIDAR 722.170) that PSC compensation may not, without the approval of the Mission Director or Assistant Administrator, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country. Compensation for TCN or CCN personal services contractors set in accordance with the provisions in paragraphs 4c(2)(ii) (A) and (B) of this clauses satisfies this requirement.

(ii) In accordance with section 408(a)(1) of the Foreign Service Act of 1980, a local compensation plan forms the basis for all compensation payments to FSNs which includes CCNs and TCNs. The plan is each post's official system of position classification and pay, consisting of the local salary schedule which includes salary rates, statements authorizing fringe benefit payments, and other pertinent facets of compensation for TCNs and CCNs, and the local position classification system as reflected in the Local Employee Position Classification Handbook (LEPCH) or equivalent in effect at the Mission. Compensation for PSCs will be in accordance with the local compensation plan, to the extent that it covers employees of the type or category being employed, unless the Mission Director determines otherwise. If the Mission Director determines that compensation in accordance with the local plan would be inappropriate in a particular instance, then compensation will be set in accordance with (in order of preference):

(A) Any other Mission policies on foreign national employee compensation; or

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[1] The Civil Service Commission is now the Federal Office of Personnel Management.

(B) Paragraphs 4 (c) (d) (e) (g) and (h) of appendix D. When compensation is set in accordance with this exception, the record shall be documented in writing with a justification prepared by the requesting office and approved by the Mission Director.

(iii) The earning of leave (annual and sick), allowances and differential (if applicable), salaries and all other related benefits cannot be enumerated in this appendix as they vary from Mission to Mission and are based upon the compensation plan for each.

(iv) Unless otherwise authorized, the currency in which compensation is paid to contractors shall be in accordance with the prevailing local compensation practice of the post.

(v) CCN and TCN contractors are eligible for allowances and differential on the same basis as direct-hire FSN employees under the post compensation plan.

(vi) An AID PSC who is a spouse of a current or retired U.S. Civil Service, U.S. Foreign Service, or U.S. military service member, and who is covered by their spouse's government health or life insurance policy, is ineligible for a contribution towards the costs of annual health and life insurance.

(vii) Retired CCNs and TCNs may be awarded personal services contracts without any reduction in or offset against their Government annuity.

(3) *Incentive Awards.* (i) All Cooperating Country Nationals direct-hire and Personal Services Contractors (PSCs) and Third Country Nationals (PSCs) of the Foreign Affairs Community are eligible for the Joint Special Embassy Incentive Awards Program.

(ii) The Joint Country Awards Committee administers each post's (Embassy) award program, including establishment of procedures for submission, review and approval of proposed awards.

(4) *Training.* CCN and TCN PSCs are eligible for most of the training courses offered in the Training Course Schedule. However, applications will be processed on a case-by-case basis and are required to be approved by the Contracting Officer.

5. Soliciting for Personal Services Contracts

(a) *Project Officer's Responsibilities.* The Project Officer will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for; the statement shall be included in the procurement request. The procurement request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) A certification from the officer in the Mission responsible for the LEPCH or equivalent that the position has been reviewed and is properly classified as to a title, series and grade in accordance with the LEPCH. If the position does not fall within the LEPCH or equivalent system, an estimate of compensation based on paragraphs 4(c)(2)(ii)(A) or (B) of this appendix after consultations or in coordination with the contract officer or executive officer;

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing advisory and assistance services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's Responsibilities.* (1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of certified biographical data and salary history. (Upon receipt, one copy of the above information shall be forwarded to the Project Officer);

(ii) A detailed statement of duties or a completed position description for the position being recruited for;

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, and General Provisions as well as the FAR Clauses to be included in full text as well as those to be incorporated by reference; and

(iv) A copy of General Notice entitled "Employee Review of the New Standards of Conduct" dated October 30, 1992.

(2) The Contracting Officer shall comply with the limitations of AIDAR 706.302-70(c) as detailed in paragraph 5(c) of this clause.

(c) *Competition.* (1) Under AIDAR 706.302-70(b)(1), Personal Services Contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers.

(i) Offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the AID Procurement Executive to satisfy the requirements of AIDAR 706.302-70(c)(2) for a justification in accordance with FAR 6.303. Use of this class justification for Personal Services Contracts with Cooperating Country Nationals and Third Country Nationals is subject to the following conditions:

(i) New contracts are publicized consistent with Mission/Embassy practice on announcement of direct hire FSN positions. Renewals or extensions with the same individual for continuing service do not need to be publicized.

(ii) A copy of the class justification (which was distributed all AID Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302-70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable. If the conditions in paragraphs (2)(i) and (ii) are not followed, the Contracting Officer must prepare a separate justification as required under AID 706.302-70(c)(2).

(3) Since the award of a personal services contract is based on technical qualifications, not price, and since the biographical data and salary history are used to solicit for such contracts, FAR Subparts 15.4 and 15.5 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this appendix shall govern.

6. Negotiating a Personal Services Contract

Negotiating a Personal Services Contract is significantly different from negotiating a nonpersonal services contract because it establishes an employer-employee relationship; therefore, the selection and negotiations procedures are more akin to the personnel selection procedures.

(a) *Project Officer's Responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's Responsibilities.* (1) The Contracting Officer shall forward a copy of biographical data and salary history received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. The terms and conditions of the contract will normally be in accordance with the local compensation plan which forms the basis for all compensation on payments paid to FSNs which includes CCNs and TCNs.

(3) The Contracting Officer shall use the certified salary history on the certified statement of biographical data and salary history as the basis for salary negotiations, along with the Project Officer's cost estimate.

(4) The Contracting Officer will obtain necessary data for a security and suitability clearance to the extent required by AID Handbook 6, Security.

7. Executing a Personal Services Contract

Contracting activities, whether AID/W or Mission, may execute Personal Services Contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them. See AIDAR 701.601.

In executing a personal service contract, the Contracting Officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A written detailed statement of duties covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable for a personal services contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for direct-hire Federal employees (under paragraph 4(b) of this appendix); and

(3) There is no apparent conflict of interest involved (if the Contracting Officer believes that a conflict of interest may exist, the

question should be referred to the cognizant legal counsel);

(d) Selection of the contractor is documented and justified (AIDAR 706.302-70(b)(1) provides an exception to the requirement for full and open competition for Personal Services Contracts abroad, see paragraph 5(c) of this appendix);

(e) The standard contract format prescribed for a Cooperating Country National and a Third Country National personal services contract (Sections 9, 10 or 11, 12, and 13 of this Appendix as appropriate) is used, or that any necessary deviations are processed as required by AIDAR 701.470;

(f) The contractor has submitted the names, addresses, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(g) The contract is complete and correct and all information required on the contract Cover Page (AID form 1420-36B) has been entered;

(h) The contract has been signed by the Contracting Officer and the contractor, and fully executed copies are properly distributed;

(i) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance to the extent required by AID Handbook 6, *Security*;

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical clearance(s) based on a full medical examination(s) and certification of same by a licensed physician. The physician's certification must be in the possession of the Contracting Officer prior to signature of contract. If a TCN is recruited, medical clearance requirements apply to the contractor and each dependent who is authorized to accompany the contractor;

(4) The approval for any salary in excess of FS-1, in accordance with appendix G of this chapter;

(5) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302-70, if applicable;

(6) Any deviation to the policy or procedures of this Appendix, processed and approved under AIDAR 701.470;

(7) The memorandum of negotiation;

(j) The position description is classified in accordance with the LEPCH, and the proposed salary is consistent with the local compensation plan or the alternate procedures established in paragraph 4(c)(2)(ii) of this clause;

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 134 (the Contracting Officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor);

(l) The contractor receives and understands AID General Notice entitled "Employee Review of the New Standards of Conduct" dated October 30, 1992 and a copy is attached to each contract, as provided for in paragraph (c) of General Provision 2, Section 12;

(m) Agency conflict of interest requirements, as set out in Chapter 2D and 2F of AID Handbook 24, are met by the contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services Contractors which may be in the form set out above or another form convenient for the contracting officer, provided that a form containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file;

(o) In consultation with the regional legal advisor and/or the regional contracting officer, the contract is modified by deleting from the General Provisions (Sections 12 and 13 of this appendix) the inapplicable clause(s) by a listing in the Schedule; and

(p) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in AID Handbook 18, *Information Services* if the PSC is project-funded.

8. Contracting Format

The prescribed Contract Cover Page, Contract Schedules, General Provisions and FAR Clauses for personal service contracts for TCNs and CCNs covered by this appendix are included as follows:

9. "Cover Page" for a contract with a Cooperating Country National or with a Third Country National.

10. "Schedule" for a contract with a Cooperating Country National or with a Third Country National.

11. "Optional Schedule for Contract with a Cooperating Country National or with a Third Country National." [Use of the Optional Schedule is intended to serve as an alternate procedure for OE funded Foreign Service National PSCs. The schedule was developed for use when the Contracting Officer anticipates incremental recurring cost funded contracts. It should be noted that the Optional Schedule eliminates the need to amend the contract each time funds are obligated. However, the Contracting Officer is required to amend each contract not less than twice during a 12 month period to ensure that the contract record of obligations is up to date and agrees with the figures in the master funding document.]

12. "General Provisions" for contract with a Cooperating Country National or with a Third Country National.

13. FAR Clauses to be incorporated in full text as well as by reference in personal services contracts.

Section 9

Appendix J

Cover Page

Contract with a Cooperating Country National or a Third Country National for Personal Services.

—AID Form 1420-36B (APRIL 1992)

BILLING CODE 6116-01-M

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

CONTRACT WITH A COOPERATING COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD [ ]

CONTRACT WITH A THIRD COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD [ ]

Negotiated Pursuant to the Foreign Assistance Act of 1961, as amended, and Executive order 11223	Contract Number	
Country of Performance	Amount Obligated This Action	Total Estimated Contract Cost $
Contract For Technical Services	Project Number (if applicable)	
For	Contractor (Name, Street, City, Country, Postal Zone)	
Contracting Office (Name and Address)		
Administered By (If other than Contracting Office)	Effective Date	Estimated Completion Date
Cognizant Scientific/Technical Office (Name, Office Symbol, Address)	Accounting and Appropriation Data PIO/T Number (if applicable) ____________ Appropriation Number ____________ Budget Plan Code ____________	
Supervising Officer		
This is a Consulting Services Contract (AIDAR 737.272) [ ] Yes [ ] No		
Payment Will be Made By	Type of Advance ("X" Appropriate Box) [ ] INITIAL [ ] NONE AUTHORIZED	

The United States of America, hereinafter called the Government, represented by the Contracting Office executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

This Contract consists of this Cover Page, the Schedule of __________ pages, including the Table of Contents, the General Provisions Section 12 and Section 13 FAR Clauses by reference.

	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By (Signature of Contracting Officer)
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36B (4/92)

BILLING CODE 6116-01-C

Section 10—Schedule

Cooperating Country National or Third Country National PSC

Contract No. ____

Table of Contents

The Schedule on pages ____through ____ consists of this Table of Contents and the following Articles:

General Provisions

The following provisions, numbered as shown below, omitting number(s) ____, are the General Provisions (GPs) of this Contract:

1. Definitions
2. Compliance with Applicable Laws and Regulations
3. Physical Fitness
4. Security
5. Workweek
6. Leave and Holidays
7. Social Security and Cooperating Country Taxes
8. Insurance
9. Travel and Transportation
10. Payment
11. Contractor-Mission Relationships
12. Termination
13. Allowances
14. Advance of Dollar Funds
15. Conversion of U.S. Dollars to Local Currency
16. Post of Assignment Privileges
17. Release of Information
18. Notices
19. Incentive Awards
20. Training
21. Medical Evacuation Services

Schedule

Note: Use of the following Schedule is not mandatory. The Schedule is intended to serve as a guideline and as a checklist for contracting offices in drafting contract schedules. Article language shall be changed to suit the needs of the particular contract. Special attention should be given to the financial planning sections where unnecessary line items should be eliminated.

Article I—Statement of Duties

[The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Orientation or training to be provided by USAID.]

Article II—Period of Service

Within ____days after written notice from the Contracting Officer that all clearances, including the doctor's certificate required under General Provision Clause 3, have been received or unless another date is specified by the contracting officer in writing, the contractor shall proceed to ____and shall promptly commence performance of the duties specified above. The contractor's period of service shall be approximately ____ in ____. (Specify time of duties in each location.)

Article III—Contractor's Compensation and Reimbursement

A. Except as reimbursement may be specifically authorized by the Mission Director or contracting officer, AID shall pay the contractor compensation after it has accrued and make reimbursements, if any are due, in currency of the post or for necessary and reasonable costs actually incurred in the performance of this contract within the categories listed in paragraph D of this article, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately ____(days) (weeks) (months) (years) (which is to include (1) vacation and sick leave which may be earned during contractor's tour of duty (GP Clause No. 6), (2) ____days for authorized travel (GP Clause 9), and (3) ____days for orientation and consultation if required by the Statement of Duties.

C. The contractor shall earn vacation leave at the rate of ____days per year under the contract (provided the contract is in force for at least 90 days) and shall earn sick leave at the rate of ____days per year under the contract.

D. Allowable Costs.

1. Compensation at the rate of LC ____per (year) (month) (week) (day), equivalent to Grade FSN– ____/____, in accordance with the Mission's Local Compensation Plan. If during the effective period of this contract the Local Compensation Plan is revised, contractor's compensation will be revised accordingly and contractor will be notified in writing by the contracting officer. Adjustments in compensation for periods when the contractor is not in compensable pay status shall be calculated as follows:

Rate of LC ____per (day) (hour).

LC ____

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.)

3. Travel and Transportation (Ref. GP Clause 9). (Includes the value of TRs furnished by the Government, not payable to contractor).

a. United States	$____	
b. International	$____	
c. Cooperating and Third Country	$____	LC____
Subtotals Item 3 ...	$____	LC ____
4. Subsistence or Per Diem (Ref. GP Clause 9).		
a. United States	$____	
b. International	$____	
c. Cooperating and Third Country	$____	LC____
Subtotals Item 4 ...	$____	LC____
5. Other Direct Costs		
a. Physical Examination (Ref. GP Clause 3)	....	LC ____
b. Miscellaneous	....	LC ____
Subtotals Item 5 ...	....	LC ____
A Total Estimated Costs (Lines 1 thru 5)	$____	LC ____

E. Maximum U.S. Dollar and Local Currency Obligation.

In no event shall a maximum U.S. Dollar obligation under this contract exceed $____ nor shall maximum local currency obligation exceed LC ____. Contractor shall keep a close account of all obligations incurred and accrued hereunder and promptly notify the contracting officer whenever it appears that the said maximum is not sufficient to cover all compensation costs reimbursable which are anticipated under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. General

The contractor shall be provided with or reimbursed in local currency (____) for the following:

[Complete]

B. Method of Payment of Local Currency Costs

Those contract costs which are specified as local currency costs in paragraph A of this article, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor is a manner adapted to the local situation, based on vouchers submitted in accordance with GP Clause 10. The documentation for such costs shall be on such forms in such manner as the Mission Director shall prescribe.

C. Cooperating or U.S. Government Furnished Equipment and Facilities

[List any logistical support, equipment, and facilities to be provided by the cooperating government or the U.S. Government at no cost to this contract; e.g., office space, supplies, equipment, secretarial support, etc., and the conditions, if any, for use of such equipment.]

Article V—Precontract Expenses

No expense incurred before signing of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the contracting officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

[Additional Schedule Clauses may be added to meet specific requirements of an individual contract.]

Section 11—Optional Schedule

Cooperating Country National or Third Country National PSC

Contract No. ____

Table of Contents

(Optional Schedule)

[Use of the Optional Schedule is not mandatory. It is intended to serve as an alternate procedure for OE funded

Cooperating Country National and Third Country National PSCs. The schedule was developed for use when the Contracting Officer anticipates incremental recurring cost funded contracts.

It should be noted that use of the Optional Schedule eliminates the need to amend the contract each time funds are obligated. However, Contracting Officer is required to amend each contract not less than twice during a 12 month period to ensure that the contract record of obligations is up to date and agrees with the figures in the master funding document.]

The Schedule on pages ___through ___ consists of this Table of Contents and the following Articles:

Article I Statement of Duties
Article II Period of Service
Article III Contractor's Compensation and Reimbursement
Article IV Costs Reimbursable and Logistic Support
Article V Precontract Expenses
Article VI Additional Clauses

General Provisions

The following provisions, numbered as shown below, omitting number(s) ___, are the General Provisions (GPs) of this contract.

1. Definitions
2. Compliance with Applicable Laws and Regulations
3. Physical Fitness
4. Security
5. Workweek
6. Leave and Holidays
7. Social Security and Cooperating Country Taxes
8. Insurance
9. Travel and Transportation
10. Payment
11. Contractor-Mission Relationships
12. Termination
13. Allowances
14. Advance of Dollar Funds
15. Conversion of U.S. Dollars to Local Currency
16. Post of Assignment Privileges
17. Release of Information
18. Notices
19. Incentive Awards
20. Training
21. Medical Evacuation Services

Article I—Statement of Duties

[The statement of duties shall include:

A. General statement of the purpose of the contract.

B. Statement of duties to be performed.

C. Orientation or training to be provided by USAID.]

Article II—Period of Service

Employment under this contract is of a continuing nature. Its duration is expected to be part of a series of sequential contracts; all contract provisions and clauses and regulatory requirements concerning availability of funds and the specific duration of this contract shall apply.

Within 10 days after written notice from the Contracting Officer that all clearances have been received, unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to (name place) and shall promptly commence performance of the duties specified in ARTICLE I of this contract. The contractor's period of service shall be approximately (specify duration from date to date).

Article III—Contractor's Compensation and Reimbursement

A. Except as reimbursement may be specifically authorized by the Mission Director or Contracting Officer, AID shall pay the contractor compensation after it has accrued and make reimbursements, if any are due, in currency of the cooperating country (LC) in accordance with the prevailing practice of the post or for necessary and reasonable costs actually incurred in the performance of this contract within the categories listed in paragraph D of this article, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately ___(days) (weeks) (months) (years) (which is to include (1) vacation and sick leave which may be earned during the contractor's tour of duty) (GP Clause No. 6), (2) ___days for authorized travel (GP clause 9), and (3) ___days for orientation and consultation if required by the Statement of Duties.

C. The contractor shall earn vacation leave at the rate of ___days per year under the contract (provided the contract is in force for at least 90 days) and shall earn sick leave at the rate of ___days per year under the contract.

D. All employee rights and benefits from the previous contract or employment, i.e., accumulated annual and sick leave balances, original service computation dates, reserve fund contributions, accumulated compensatory time, social security contributions, seniority and longevity bonuses are considered allowable costs and as a continuation as long as the break in service does not exceed three days.

E. Allowable Costs.

1. The following illustrative budget details allowable costs under this contract and provides estimated incremental recurrent cost funding in the total amount shown. Additional funds for the full term of this contract will be provided by the preparation of a master PSC funding document issued by the Mission Controller for the purpose of providing additional funding for a specific period. The master PSC funding document will be attached to this contract and will form a part of the executed contract while also serving to amend the budget.

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.)

LC ___

3. Travel and Transportation (Ref. CP Clause 9). (Includes the value of TRs furnished by the Government, not payable to contractor).

a. United States	$___	
b. International	$___	
c. Cooperating and Third Country	$___	LC ___
Subtotals Item 3	$___	LC ___

4. Subsistence or Per Diem (Ref. GP Clause 9.)

a. United States	$___	
b. International	$___	
c. Cooperating and Third Country	$___	LC ___
Subtotals Item 3	$___	LC ___

5. Other Direct Costs.

a. Physical Examination (Ref. GP Clause 3)	....	LC ___
b. Miscellaneous	....	LC ___
Subtotals Item 5	....	LC ___
Total Estimated Costs (Lines 1 thru 5)	$___	LC ___

F. Allowable costs compensation and all terms and benefits of employment under this contract will be in accordance with the Mission's local compensation plan. Salary changes and personnel-related contract actions will be made by processing the same forms as used in making such changes and actions for direct-hire FSN employees. When issued by the Contracting Officer, the forms utilized will be attached to the contract and will form a part of the contract terms and conditions.

Any adjustment or increase in the compensation granted to direct-hire employees under the local compensation plan will be allowed for in the PSCs subject to the availability of funds. Such an adjustment will be effected by a mass pay adjustment notice from the Contracting Officer, which will be attached to the contract and form a part of the executed contract.

At the end of each year of satisfactory service, PSC contractors will be eligible to receive an increase equal to one annual step increase as shown in the local compensation plan, pending availability of funds. Such increase will be effected by the execution of an SF–1126, payroll change slip which is to be attached to each contract and each action forms a part of the official contract file.

Under the Joint incentive awards program for FSNs, monetary awards will be made pending availability of funds. The increase for the award will be effected by the execution of an SF–1126 which will be attached to the contract and will form a part of the contract. In no event may costs under the contract exceed the total amount obligated.

The master PSC funding document may not exceed the term or estimated total cost of this contract. Notwithstanding that additional funds are obligated under this contract through the issuance and attachment of the master PSC funding document, all other contract terms and conditions remain in full effect.

Article IV—Costs Reimbursable and Logistic Support

A. General

The contractor shall be provided with or reimbursed in local currency (___) for the following:

[Complete]

B. Method of Payment of Local Currency Costs

Those contract costs which are specified as local currency costs in Paragraph A of this article, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with GP Clause 10. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

C. Cooperating or U.S. Government Furnished Equipment and Facilities

[List any logistical support, equipment, and facilities to be provided by the cooperating government or the U.S. Government at no cost to this contract; e.g., office space, supplies, equipment, secretarial support, etc., and the conditions, if any, for use of such equipment.]

Article V—Precontract Expenses

No expense incurred before signing of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the contracting officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

[Additional Schedule Clauses may be added to meet specific requirements of an individual contract.]

Section 12

General Provisions—Contract With a Cooperating Country National or Third Country National for Personal Services

To be used to contract with cooperating country nationals or third country nationals for personal services.

Index of Clauses

1. Definitions
2. Compliance with Applicable Laws and Regulations
3. Physical Fitness
4. Security
5. Workweek
6. Leave and Holidays
7. Social Security and Cooperating Country Taxes
8. Insurance
9. Travel and Transportation
10. Payment
11. Contractor-Mission Relationships
12. Termination
13. Allowances
14. Advance of Dollar Funds
15. Conversion of U.S. Dollars to Local Currency
16. Post of Assignment Privileges
17. Release of Information
18. Notices
19. Incentive Awards
20. Training

1. Definitions (July 1993) [For Use in Both Cooperating Country National (CCN) and Third Country National (TCN) Contracts]

(a) *AID* shall mean the Agency for International Development.

(b) *Administrator* shall mean the Administrator or the Deputy Administrator of the Agency for International Development.

(c) *Contracting Officer* shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) *Cooperating Country National* shall mean the individual engaged to serve in the Cooperating Country under this contract.

(e) *Cooperating Country* shall mean the foreign country in or for which services are to be rendered hereunder.

(f) *Cooperating Government* shall mean the government of the Cooperating Country.

(g) *Government* shall mean the United States Government.

(h) *Economy Class* air travel shall mean a class of air travel which is less than business or first class.

(i) *Local Currency* shall mean the currency of the cooperating country.

(j) *Mission* shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(k) *Mission Director* shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(l) *Third Country National* shall mean an individual (i) who is neither a citizen of the United States nor of the country to which assigned for duty, and (ii) who is eligible for return travel to the TCN's home country or country from which recruited at U.S. Government expenses, and (iii) who is on a limited assignment for a specific period of time.

(m) *Tour of Duty* shall mean the contractor's period of service under this contract and shall include, authorized leave and international travel.

(n) *Traveler* shall mean the contractor or dependents of the contractor who are in authorized travel status.

(o) *Dependents* shall mean spouse and children (including step and adopted children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

2. Compliance With Laws and Regulations Applicable Aboard (July 1993) [For Use in Both CCN and TCN Contracts]

(a) *Conformity to Laws and Regulations of the Cooperating Country.* Contractor agrees that, while in the cooperating country, he/she as well as authorized dependents will abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase or Sale of Personal Property or Automobiles.* [For TCNs Only].

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) *Code of Conduct.* The contractor shall, during his/her tour of duty under this contract, be considered an "employee" (or if his/her tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions of 18 U.S.C. 202(a) the AID General Notice entitled Employee Review of the New Standards of Conduct. The contractor acknowledges receipt of a copy of these documents by his/her acceptance of this contract.

3. Physical Fitness (July 1993) [For Use in Both CCN and TCN Contracts]

(a) *Cooperating Country National.* The contractor shall be examined by a licensed doctor of medicine, and shall obtain a certificate that, in the doctor's opinion, the contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract. A copy of the certificate shall be provided to the Contracting Officer before the contractor starts work under the contract. The contractor shall be reimbursed for the cost of the physical examination based on the rates prevailing locally for such examinations in accordance with Mission practice.

(b) *Third Country National.* (i) The contractor shall obtain a physical examination for himself/herself and any authorized dependents by a licensed doctor of medicine. The contractor shall obtain a certificate from the doctor that, in the doctor's opinion, the contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract, and the contractor's authorized dependents are physically qualified to reside in the cooperating country. A copy of that certificate shall be provided to the Contracting Officer prior to the dependents' departure for the cooperating country.

(ii) The contractor shall be reimbursed for the cost of the physical examinations mentioned above as follows: (1) Based on those rates prevailing locally for such examinations in accordance with Mission practice or (2) if not done locally, not to exceed $100 per examination for the contractor's dependents of 12 years of age and over and not to exceed $40 per examination for contractor's dependents under 12 years of age. The contractor shall also be reimbursed for the cost of all immunizations normally authorized and extended to FSN employees.

4. Security (July 1993) [For Use in Both CCN and TCN Contracts]

(a) The contractor is obligated to notify immediately the Contracting Officer if the contractor is arrested or charged with any offense during the term of this contract.

(b) The contractor shall not normally have access to classified or administratively controlled information and shall take conscious steps to avoid receiving or learning of such information. However, based on contractor's need to know, Mission may authorize access to administratively controlled information for performance of assigned scope of work on a case-by-case basis in accordance with AID Handbook 6.

(c) The contractor agrees to submit immediately to the Mission Director or

Contracting Officer a complete detailed report marked "Privileged Information", of any information which the contractor may have concerning existing or threatened espionage, sabotage, or subversive activity against the United States of America or the USAID Mission or the cooperating country government.

5. Workweek (Oct 1987) [For Use in Both CCN and TCN Contracts]

The contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Schedule, and shall coincide with the workweek for those employees of the Mission or the cooperating country agency most closely associated with the work of this contract. If approved in advance in writing, overtime worked by the contractor shall be paid in accordance with the procedures governing premium compensation applicable to direct-hire foreign service national employees. If the contract is for less than full time (40 hours weekly), the leave earned shall be prorated.

6. Leave and Holidays (Oct 1987) [For Use in Both CCN and TCN Contracts]

(a) *Vacation Leave.* The contractor may accrue, accumulate, use and be paid for vacation leave in the same manner as such leave is accrued, accumulated, used and paid to foreign service national direct-hire employees of the Mission. No vacation leave shall be earned if the contract is for less than 90 days. Unused vacation leave may be carried over under an extension or renewal of the contract as long as it conforms to Mission policy and practice. With the approval of the Mission Director, and if the circumstances warrant, a contractor may be granted advance vacation leave in excess of that earned, but in no case shall a contractor be granted advance vacation leave in excess of that which he/she will earn over the life of the contract. The contractor agrees to reimburse AID for leave used in excess of the amount earned during the contractor's assignment under the contract.

(b) *Sick Leave.* The contractor may accrue, accumulate, and use sick leave in the same manner as such leave is accrued, accumulated and used by foreign service national direct-hire employees of the Mission. Unused sick leave may be carried over under an extension of the contract. The contractor will not be paid for sick leave earned but unused at the completion of this contract.

(c) *Leave Without Pay.* Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(d) *Holidays.* The contractor shall be entitled to all holidays granted by the Mission to direct-hire cooperating country national employees who are on comparable assignments.

7. Social Security and Cooperating Country Taxes (Dec 1986) [For Use in Both CCN and TCN Contracts]

Funds for Social Security, retirement, pension, vacation or other cooperating country programs as required by local law shall be deducted and withheld in accordance with laws and regulations and rulings of the cooperating country or any agreement concerning such withholding entered into between the cooperating government and the United States Government.

8. Insurance (July 1993) [For Use in Both CCN and TCN Contracts]

(a) *Worker's Compensation Benefits.* The contractor shall be provided worker's compensation benefits under the Federal Employees Compensation Act.

(b) *Health and Life Insurance.* The contractor shall be provided personal health and life insurance benefits on the same basis as they are granted to direct-hire CCNs and TCN employees at the post under the Post Compensation Plan.

(c) *Insurance on Private Automobiles—Contractor Responsibility* [For use in TCN contracts]. If the contractor or dependents transport, or cause to be transported, any privately owned automobile(s) to the cooperating country, or any of them purchase an automobile within the cooperating country, the contractor agrees to ensure that all such automobile(s) during such ownership within the cooperating country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the cooperating country: injury to persons, $10,000/$20,000; property damage, $5,000. The contractor further agrees to deliver, or cause to be delivered to the Mission Director, copies of the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the cooperating country. The premium costs for such insurance shall not be a reimbursable cost under this contract.

(d) *Claim for Private Personal Property Losses* [For use in TCN contracts]. The contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, "Overseas Support", Chapter 10.

9. Travel and Transportation Expenses (July 1993) [For Use in Both CCN and TCN Contracts as appropriate]

(a) *General.* The contract will be reimbursed in currency consistent with the prevailing practice at post and at the rates established by the Mission Director for authorized travel in the cooperating country in connection with duties directly referable to work under this contract. In the absence of such established rates, the contractor shall be reimbursed for actual costs of authorized travel in the cooperating country if not provided by the cooperating government or the Mission in connection with duties directly referable to work hereunder, including travel allowances at rates prescribed by AID Handbook 22, "Foreign Service Travel Regulations", as from time to time amended.

The Executive or Administrative Officer at the Mission may furnish Transportation Requests (TR's) for transportation authorized by this contract which is payable in local currency or is to originate outside the United States. When transportation is not provided by Government issued TR, the contractor shall procure the transportation, and the costs will be reimbursed. The following paragraphs provide specific guidance and limitations on particular items of cost.

(b) *International Travel.* For travel to and from post of assignment, the TCN contractor shall be reimbursed for travel costs and travel allowances from place of residence in the country of recruitment (or other location provided that the cost of such travel does not exceed the cost of the travel from the place of residence) to the post of duty in the cooperating country and return to place of residence in the country of recruitment (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the cooperating country to the contractor's residence) upon completion of services by the individual. Reimbursement for travel will be in accordance with AID's established policies and procedures for its CCN and TCN direct-hire employees and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route. If the contract is for longer than one year and the contractor does not complete one full year at post of duty (except for reasons beyond his/her control), the costs of going to and from the post of duty for the contractor and his/her dependents are not reimbursable hereunder. If the contractor serves more than one year but less than the required service in the cooperating country (except for reasons beyond his/her control) costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the contractor's permanent, legal place of residence at the time he or she was employed for work under this contract are not reimbursable under this contract for the contractor and his/her dependents. When travel is by economy class accommodations, the contractor will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers shall not be in excess of the rats authorized in the Standardized Regulations (Government Civilians, Foreign Areas) hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Federal Travel Regulations as from time to time amended.

(c) *Local Travel.* Reimbursement for local travel in connection with duties directly referable to the contract shall not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the contractor shall be reimbursed for actual travel costs in the Cooperating Government or the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(d) *Indirect Travel for Personal Convenience of a TCN.* When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by the United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(e) *Limitation on Travel by TCN Dependents.* Travel costs and allowances will be allowed for authorized dependents of the contractor and such costs shall be reimbursed for travel from place of abode in the country of recruitment to the assigned station in the Cooperating Country and return, only if the dependent remains in the Cooperating Country for at least 9 months or one-half of the required tour of duty of the contract, whichever is greater, except as otherwise authorized hereunder for education, medical, or emergency visitation travel.

Dependents of the TCN contractor must return to the country of recruitment or home country within thirty days of the termination or completion of the contractor's employment, otherwise such travel will not be reimbursed under this contract.

(f) *Delays En Route.* The contractor may be granted reasonable delays en route while in travel status when such delays are caused by events beyond the control of the contractor and are not due to circuitous routing. It is understood that if delay is caused by physical incapacitation, he/she shall be eligible for such sick leaves as provided under the "Leave and Holidays" clause of this contract.

(g) *Travel by Privately Owned Automobile (POV).* If travel by POV is authorized in the contract schedule or approved by the Contracting Officer, the contractor shall be reimbursed for the cost of travel performed in his/her POV at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and, if the POV is being driven to or from the cooperating country as authorized under the contract, for each of the authorized dependents traveling in the POV, provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever is less.

(h) *Emergency and Irregular Travel and Transportation.* [For TCNs only]. Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for FSN direct-hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the cooperating country to another approved location for the contractor and authorized dependents and returning to post of duty, subject to the prior written approval of the Mission Director, when such travel is necessary for one of the following reasons:

(i) Need for medical care beyond that available within the area to which contractor is assigned.

(ii) Serious effect on physical or mental health if residence is continued at assigned post of duty.

(iii) Serious illness, injury, or death of a member of the contractor's immediate family or a dependent, including preparation and return of the remains of a deceased contractor or his/her dependents.

(2) Emergency evacuation when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Transportation and travel allowances at safe haven and the transportation of household effects and automobile or storage thereof when authorized by the Mission Director, shall be payable in accordance with established Government regulations.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations when in his/her opinion the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and household effects, etc.

(i) *Country of Recruitment Travel and Transportation.* [For TCNs only]. The contractor shall be reimbursed for actual transportation costs and travel allowances in the country of recruitment as authorized in the Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercial-scheduled air travel by the most expeditious route except as otherwise provided in paragraph (h) of this clause unless economy air travel is not available and the contractor adequately documents this to satisfaction of the Contracting Officers in documents submitted with the voucher.

(j) *Rest and Recuperation Travel.* [For TCNs only].

If approved in writing by the Mission Director, the contractor and his/her dependents shall be allowed rest and recuperation travel on the same basis as direct-hire TCN employees and their dependents at the post under the local compensation plan.

(k) *Transportation of Personal Effects (Excluding Automobiles and Household Goods).* [For TCNs only].

(1) *General.* Transportation costs will be paid on the same basis as for direct-hire employees at post serving the same length tour of duty, as authorized in the schedule. Transportation, including packing and crating costs, will be paid for shipping from contractor's residence in the country of recruitment or other location, as approved by the Contracting Officer (provided that the cost of transportation does not exceed the cost from the contractor's residence) to post of duty in the cooperating country and return to the country of recruitment or other location provided the cost of transportation of the personal effects of the contractor not to exceed the limitations in effect for such shipments for AID direct-hire employees in accordance with the Foreign Service Travel Regulations in effect at the time shipment is made. These limitations may be obtained from the Contracting Officer.

The cost of transporting household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier.

(2) *Unaccompanied Baggage.* Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival of the contractor and dependents. To permit the arrival of effects to coincide with the arrival of the contractor and dependents, consideration should be given to advance shipments of unaccompanied baggage. The contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance for household effects) not to exceed the limitations in effect for AID direct-hire employees in accordance with the Foreign Service Travel Regulations in effect when shipment is made. These limitations are available from the Contracting Officer. This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

(l) *Reduced Rates on U.S.-Flag Carriers.* Reduced rates on U.S-flag carriers are in effect for shipments of household goods and personal effects of AID contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(m) *Transportation of things.* [For TCNs Only.] Where U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may obtain a release from the requirement to use U.S. flag vessels from the Transportation Division, Office of Procurement, Agency for International Development, Washington, DC 20523–1419, or the Mission Director, as appropriate, giving the basis for the request.

(n) *Repatriation Travel.* [For TCNs Only.] Notwithstanding other provisions of this Clause 9, a TCN must return to the country of recruitment or to the TCN's home country within 30 days after termination or completion of employment or forfeit all right to reimbursement for repatriation travel. The return travel obligation [repatriation travel] assumed by the U.S. Government may have been the obligation of another employer in the area of assignment if the employee has been in substantially continuous employment which provided for the TCN's return to home country or country from which recruited.

(o) *Storage of household effects.* [For TCNs Only.] The cost of storage charges (including packing, crating, and drayage costs) in the country of recruitment of household goods of regular employees will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (k) of this clause provided that the total amount of effects shipped to the Cooperating Country or stored in the country of recruitment shall not exceed the amount authorized for AID direct-hire employees under the Foreign Service Travel Regulations. These amounts are available from the Contracting Officer.

10. Payment (DEC 1992) [For Use in Both CCN and TCN Contracts]

(a) Payment of compensation shall be based on written documentation supporting time and attendance which may be: (1) Maintained by the Mission in the same way as for direct-hire CCNs and TCNs or (2) the contractor may submit such written documentation in a form acceptable to Mission policy and practice as required for other personal services contractors and as directed by the Mission Controller or paying office. The documentation will also provide information required to be filed under cooperating country laws to permit withholding by AID of funds, if required, as described in the clause of these General Provisions entitled Social Security and Cooperating Country Taxes.

(b) Any other payments due under this contract shall be as prescribed by Mission policy for the type of payment being made.

(c) Interest on Overdue Payments.

(1) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85.31; U.S.C. 1801) is applicable to payments under this contract and requires the payment to the contractor of interest on overdue payments and improperly taken discounts.

(2) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125 except as provided in paragraph (c)(3) of this clause or as otherwise specifically provided under this contract.

(3) Notwithstanding the provisions of OMB Circular A-125, Section 4.1, the Government will use its best efforts to make payments under this contract as soon as practicable following receipt of a proper invoice.

11. Contractor-Mission Relationships (Dec. 1986) [For Use in Both CCN and TCN Contracts]

(a) The contractor acknowledges that this contract is an important part of the U.S. Foreign Assistance Program and agrees that his/her duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails. Favorable relations between the Mission and the Cooperating Government as well as with the people of the cooperating country require that the contractor shall show respect for the conventions, customs, and institutions of the cooperating country and not become involved in any illegal political activities.

(b) If the contractor's conduct is not in accordance with paragraph (a), the contract may be terminated pursuant to the General Provision of this contract, entitled "Termination." If a TCN, the contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(c) The Mission Director is the chief representative of AID in the cooperating country. In this capacity, he/she is responsible for the total AID Program in the cooperating country including certain administrative responsibilities set forth in this contract and for advising AID regarding the performance of the work under the contract and its effect on the U.S. Foreign Assistance Program. The contractor will be responsible for performing his/her duties in accordance with the statement of duties called for by the contract. However, he/she shall be under the general policy guidance of the Mission Director and shall keep the Mission Director or his/her designated representative currently informed of the progress of the work under this contact.

12. Termination (Nov. 1989) [For Use in Both CCN and TCN Contracts]

(This is an approved deviation to be used in place of the clause specified in FAR 52.249-12.)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

(1) For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the contractor in the event: (i) The contractor commits a breach or violation of any obligations herein contained, (ii) a fraud was committed in obtaining this contract, or (iii) the contractor is guilty (as determined by AID) of misconduct in the cooperating country. Upon such a termination, the contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the contractor performs services hereunder, whichever is earlier. No costs of any kind incurred by the contractor after the date such notice is delivered shall be reimbursed hereunder except the cost of return transportation (not including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been paid by AID, the contractor shall promptly refund to AID any such prepayment as directed by the Contracting Officer.

(2) For the convenience of AID, by giving not less than 15 calendar days advance written notice to the contractor. Upon such a termination, contractor's right to compensation shall cease when the period specified in such notice expires except that the contractor shall be entitled to any accrued, unused vacation leave, return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rates specified in the contract and subject to the limitations which apply to authorized travel status.

(3) For the convenience of AID, when the contractor is unable to complete performance of his/her services under the contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The contract shall be deemed terminated upon delivery to the contractor of a termination notice. Upon such a termination, the contractor shall not be entitled to compensation except to the extent of any accrued, unused vacation leave, but shall be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the contract and subject to the limitations which apply to authorized travel status.

(b) The contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

13. Allowances (Dec 1986) [For TCNs only]

Allowances will be granted to the contractor and authorized dependents on the same basis as to direct-hire TCN employees at the post under the Post Compensation Plan. The allowances provided shall be paid to the contractor in the currency of the cooperating country or in accordance with the practice prevailing at the Mission.

14. Advance of Dollar Funds (Dec 1986) [For TCNs only]

If requested by the contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

15. Conversion of U.S. Dollars to Local Currency (Dec 1986) [For TCNs only]

Upon arrival in the cooperating country, and from time to time as appropriate, the contractor shall consult with the Mission Director or his/her authorized representative who shall provide, in writing, the policy the contractor shall follow in the conversion of one currency to another currency. This may include, but not be limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

16. Post of Assignment Privileges (Dec 1986) [For TCNs only]

Privileges such as the use of APO, PX's, commissaries and officer's clubs are established at posts abroad pursuant to agreement between the U.S. and host governments. These facilities are intended for and usually limited to U.S. citizen members of the official U.S. Mission including the

Embassy, USAID, Peace Corps, U.S. Information Services and the Military. Normally, the agreements do not permit these facilities to be made available to non-U.S. citizens if they are under contract to the United States Government. However, in those cases where the facilities are open to TCN contractor personnel, they may be used.

17. Release of Information (Dec 1986) [For Use in Both CCN and TCN Contracts]

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this contract by the contractor and all reports and recommendations hereunder shall be treated as privileged information by the contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this contract.

18. Notices (Dec 1986) [For Use in Both CCN and TCN Contracts]

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

(a) TO AID: To the Mission Director of the Mission in the Cooperating Country with a copy to the appropriate Contracting Officer.

(b) TO the Contractor: At his/her post of duty while in the Cooperating Country and at the contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required.

Notices hereunder shall be effective when delivered in accordance with this clause or on the effective date of the notice, whichever is later.

19. Incentive Awards (July 1993)

All Cooperating Country National (CCN) Personal Services Contractors (PSCs) and Third Country Nationals (TCNs) of the Foreign Affairs Community are eligible for the Joint Embassy Incentive Awards Program. The program is administered by each post's (Embassy) Joint Country Awards Committee.

20. Training (July 1993)

The contractor may be provided job related training to develop growth potential, expand capabilities and increase knowledge and skills. The training may be funded under the personal services contract.

21. Medical Evacuation (Medevac) Services (July 1993) [For TCN Contracts Only]

(a) The contractor agrees to obtain medevac service coverage for himself/herself and his/her authorized dependents while performing personal services abroad. Coverage shall be obtained pursuant to the terms of the contract between AID and AID's medevac service provider unless exempted in accordance with paragraph (b).

(b) The following are exempted from the requirements in paragraph (a):

(i) Contractors and their dependents with a health insurance program that includes sufficient medevac coverage as approved by the Contractor Officer.

(ii) Contractors and their dependents located at Missions where the Mission Director makes a written determination to waive the requirement for such coverage based on findings that the quality of local medical services or other circumstances obviate the need for such coverage.

(c) Information on the current medevac service provider, including application procedures, is available from the Contracting Officer.

Dated: August 27, 1993.

John F. Owens,

Procurement Executive.

[FR Doc. 93-26552 Filed 11-1-93; 8:45 am]

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federal register

Tuesday
November 2, 1993

Part III

Environmental Protection Agency

40 CFR Part 282

Underground Storage Tank Program; Approved Program for New Hampshire; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL-4794-8]

Underground Storage Tank Program; Approved State Program for New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency to grant approval to states to operate their underground storage tank programs in lieu of the federal program. This action establishes part 282 for codification of the decision to approve a state program and for incorporation by reference of those provisions of state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. As part of this initial action, part 282 codifies the prior approval of New Hampshire's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective January 3, 1994, unless EPA publishes a prior **Federal Register** rule withdrawing this immediate final rule. All comments on this regulation must be received by the close of business December 2, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of January 3, 1994, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. UST 4-5), Office of Underground Storage Tanks (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA may be inspected in the public docket, located in room 2616 (Mall), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or in Washington, DC at (202) 382-3000. For technical questions on the part 282 rule, consult Jerry Parker, U.S. EPA, Office of Underground Storage Tanks, at (703) 308-8884. For technical questions on the New Hampshire codification, consult Susan Hanamoto, Underground Storage Tank Program, U.S. EPA Region I, JFK Federal Building, Boston, MA 02203-2211. Phone: (617) 573-5748.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency (EPA) to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** rule announcing its decision to grant approval to New Hampshire (56 FR 28089, June 19, 1991). Approval was effective on July 19, 1991.

EPA will codify its approval of state programs in a new 40 CFR part 282 and incorporate by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rule establishes part 282, reserves sections within part 282 for each state, and codifies EPA's approval of the New Hampshire underground storage tank program. This codification reflects the state program in effect at the time EPA granted New Hampshire approval under section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. The establishment of part 282 is an Agency procedure exempt from the notice and comment requirements of 5 U.S.C. 553, as is the codification of the New Hampshire UST program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the New Hampshire program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved New Hampshire program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in New Hampshire, the status of federally approved requirements of the New Hampshire program will be readily discernible. Only those provisions of the New Hampshire underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of New Hampshire's underground storage tank program, EPA has added § 282.79 to title 40 of the CFR. Section 282.79 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.79 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities and federal procedures, rather than the state authorized analogs to these provisions. Therefore, the approved New Hampshire enforcement authorities will not be incorporated by reference. Section 282.79 lists those approved New Hampshire authorities that fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.79 simply lists for reference and clarity the New Hampshire statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the EPA hereby certifies that this action will not have any economic impact on any small entities. It establishes a new part 282 in 40 CFR and codifies the decision already made to approve the New Hampshire underground storage program and has no separate effect on owners and operators of underground storage tanks or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

This immediate final rule has been submitted to OMB for review under Executive Order 12291. The Agency has determined that it is a non-major rule because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The Office of Management and Budget has exempted individual state codifications from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: October 13, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended by adding a new part 282 to read as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

Subpart A—General Provisions

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

Subpart A—General Provisions

§ 282.1 Purpose and scope.

This part sets forth the applicable state underground storage tank programs under section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c and 40 CFR part 281. "State" is defined in 42 U.S.C. 1004(31) as "any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands."

§ 282.2 Incorporation by reference.

(a) Material listed as incorporated by reference in part 282 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**.

(b) Copies of materials incorporated by reference may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of materials incorporated by reference may be obtained or inspected at the EPA OUST Docket, 401 M Street, SW., Washington, DC 20460, and at the library of the appropriate Regional Office listed below:

(1) Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): JFK Federal Building, Boston, MA 02203–2211.

(2) Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands): Federal Office Building, 26 Federal Plaza, New York, NY 10278.

(3) Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): 841 Chestnut St. Building, Philadelphia, PA 19107.

(4) Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): 345 Courtland St., NE, Atlanta, GA 30365.

(5) Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): 77 West Jackson Boulevard, Chicago, IL 60604.

(6) Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): 1445 Ross Avenue, Dallas, TX 75202–2733.

(7) Region 7 (Iowa, Kansas, Missouri, Nebraska): 726 Minnesota Avenue, Kansas City, KS 66101.

(8) Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): 999 18th Street, Denver, CO 80202–2405.

(9) Region 9 (Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands): 75 Hawthorne Street, San Francisco, CA 94105.

(10) Region 10 (Alaska, Idaho, Oregon, Washington): 1200 Sixth Avenue, Seattle, WA 98101.

(c) For an informational listing of the state and local requirements incorporated in part 282, see appendix A to this part.

§§ 282.3 through 282.49 [Reserved]

Subpart B—Approved State Programs

§§ 282.50–282.78 [Reserved]

§ 282.79 New Hampshire.

(a) The State of New Hampshire is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the New Hampshire Department of Environmental Services, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA's approval was effective on July 19, 1991.

(b) New Hampshire has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other applicable statutory and regulatory provisions.

(c) To retain program approval, New Hampshire must revise its approved program to adopt changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If New Hampshire obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this section and notice of any change will be published in the **Federal Register.**

(d) New Hampshire has final approval for the following elements submitted to EPA in New Hampshire's program application for final approval and approved by EPA on June 19, 1991, becoming effective on July 19, 1991.

Copies may be obtained from the Underground Storage Tank Program, New Hampshire Department of Environmental Services, 6 Hazen Drive, Concord, NH 03302–0095.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) New Hampshire Statutory Requirements Applicable to the Underground Storage Tank Program, 1993.

(B) New Hampshire Regulatory Requirements Applicable to the Underground Storage Tank Program, 1993.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: New Hampshire Revised Statutes Annotated (Supplement 1988) Sections 146–C:9a, 146–C:10, and 146–C:10a; 147 A:1 through 147–A:13; 541–A:1 through 541–A:10; 91–A:1 through 91–A:8.

(B) The regulatory provisions include: New Hampshire Code of Administrative Rules (1990) Part Env. C–602.08; Part He–P 1905.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: New Hampshire Revised Statutes Annotated (Supplement 1988) Section 146–C:1.XII, insofar as it refers to heating oil for consumptive use on the premises where stored.

(B) The regulatory provisions include: New Hampshire Code of Administrative Rules (1990) Sections Env–Ws 411.01 and 411.02, insofar as they refer to heating oil for consumptive use on the premises where stored.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of New Hampshire on November 1, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of New Hampshire to EPA, November 1, 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures For Adequate Enforcement" submitted as part of the original application in December 1990, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application in December 1990, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region I and the New Hampshire Department of Environmental Services, signed by the EPA Regional Administrator on August 8, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

§§ 282.80–282.105 [Reserved]

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

The following is an informational listing of the state requirements incorporated by reference in part 282 of the Code of Federal Regulations:

New Hampshire

(a) The statutory provisions include New Hampshire Revised Statutes Annotated 1955, 1990 Replacement Edition, and 1992 Cumulative Supplement, Chapter 146–C, Underground Storage Facilities:

Section 146–C:1 Definitions, except for the following words in 146–C:1. XII, "heating or."
Section 146–C:2 Discharges Prohibited.
Section 146–C:3 Registration of Underground Storage Facilities.
Section 146–C:4 Underground Storage Facility Permit Required.
Section 146–C:5 Records Required; Inspections.
Section 146–C:6 Transfer of Ownership.
Section 146–C:6–a Exemption.
Section 146–C:7 New Facilities.
Section 146–C:8 Prohibition Against Reusing Tanks.
Section 146–C:9 Rulemaking.
Section 146–C:11 Liability for Cleanup Costs; Municipal Regulations.
Section 146–C:12 Federal Assistance and Private Funds.

(b) The regulatory provisions include:

(1) New Hampshire Code of Administrative Rules (November 1990) Part Env-Ws 411, Control of Underground Storage Facilities:

Section 411.01 Purpose, except for the following words, "heating oils."
Section 411.02 Applicability, except for 411.02(d).
Section 411.03 Definitions.
Section 411.04 Registration.
Section 411.05 Change in Use.
Section 411.06 Information Required for Registration.
Section 411.07 Permit to Operate.
Section 411.08 Transfer of Facility Ownership.
Section 411.10 Financial Responsibility.
Section 411.11 Inventory Monitoring.
Section 411.12 Regulated Substance Transfers.
Section 411.13 Tightness Testing.
Section 411.14 Certification of Technicians Performing Tightness Tests.
Section 411.15 Tightness Test Failures.
Section 411.16 Unusual Operating Conditions.
Section 411.17 Temporary Closure.
Section 411.18 Permanent Closure.
Section 411.19 Prohibition Against Reusing Tanks.
Section 411.20 Requirements for Approval of Underground Storage Systems.
Section 411.21 Tank Standards for New Underground Storage Systems.
Section 411.22 Piping Standards for New Underground Storage Systems.
Section 411.23 Secondary Containment for New Tanks.
Section 411.24 Secondary Containment for New Pressurized Piping.
Section 411.25 Spill Containment and Overfill Protection.
Section 411.26 Leak Monitoring for New Tanks.
Section 411.27 Leak Monitoring for New Underground Piping Systems.
Section 411.28 Installation of New Underground Storage Systems.
Section 411.29 Release Detection for Tanks Without Secondary Containment and Leak Monitoring, except for the following words in 411.29(a), "With the exception of on premise use heating oil systems."
Section 411.30 Release Detection for Piping.
Section 411.31 Operation of Leak Monitoring Equipment.
Section 411.32 Corrosion Protection for Steel Tanks.
Section 411.33 Corrosion Protection for Piping.
Section 411.34 Submission of Corrosion Protection Plan.
Section 411.35 Relining Steel Tanks.
Section 411.36 Repair of Fiberglass-Reinforced Plastic Tanks.
Section 411.37 Repair and Replacement of Piping Systems.
Section 411.38 Field Fabricated Tanks.
Section 411.39 Secondary Containment for Hazardous Substance Systems.
Section 411.40 Waivers.

(2) New Hampshire Code of Administrative Rules (November 1990) Part Env-Ws 412, Reporting and Remediation of Oil Discharges:

Section 412.01 Purpose.
Section 412.02 Applicability.

Section 412.03 Definitions.
Section 412.04 Notification.
Section 412.05 Initial Response Action.
Section 412.06 Abatement Measures.
Section 412.07 Free Product Removal.
Section 412.08 Initial Site Characterization.
Section 412.09 Investigation Due to Discovery of Discharges from Unknown Sources.
Section 412.10 Site Investigation.
Section 412.11 Site Investigation Report.
Section 412.12 Remedial Action Plan.
Section 412.13 Public Notification.
Section 412.14 Waivers.

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Tuesday
November 2, 1993

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 3180

Onshore Oil and Gas Unit Agreements: Unproven Areas; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3180

[WO-610-4111-02-2411-24 1A; Circular No. 2652]

RIN 1004-AB73

Onshore Oil and Gas Unit Agreements: Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends several administrative provisions in the regulations that govern Federal onshore oil and gas exploratory unit agreements. The rule codifies Bureau of Land Management (BLM) policy, made effective on January 29, 1990, that all such unit agreements approved by BLM after that date shall provide for payment to the Government of royalties on production from any participating area (PA) containing unleased Federal lands. A second rule change clarifies the effective date of Federally-approved unit agreements, and a third change provides for consistency in the appeals process under parts 3160 and 3180 of title 43 of the regulations.

EFFECTIVE DATE: December 2, 1993.

ADDRESSES: Suggestions or inquiries should be sent to: Director (610), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653-2133, or Wayne Stevens, (916) 978-4735.

SUPPLEMENTARY INFORMATION: The Federal Government sustains a loss of royalty income when unleased Federal lands within a unit participating area (PA) are drained by producing wells on non-Federal tracts or on Federal tracts producing under a lower royalty rate. The BLM attempts to avoid this revenue loss by leasing these lands and having them committed to the unit agreement, but it is sometimes unable to do so for reasons beyond its control. For example, the lands may be in a wilderness area or withdrawn from mineral leasing for some other reason.

The public interest requires the United States to be assured of compensation for such lost royalty revenue, and on February 4, 1992, a rule was published proposing to require the inclusion of a royalty compensation provision in all subsequent Federally-approved exploratory unit agreements. In order to standardize this royalty payment provision, we proposed revision of sections 12 and 17 of the model form for Federal exploratory unit agreements at 43 CFR 3186.1. Although the new royalty compensation provision will be included in all new Federally-approved agreements for unproven areas, it will affect only those units containing unleased Federal land within a PA.

Comments on the proposed rule changes were received from 8 parties. Most comments supported the rule and suggested changes intended to clarify certain aspects of the proposal. Two comments, however, contend that BLM lacks the statutory authority to condition unit approval on the inclusion of a royalty payment provision for unleased lands in the unit agreement. These comments further assert that Congress has limited the authority of the Secretary to protect public lands from drainage to two means: either to lease the unleased lands that are being drained, or to negotiate voluntary agreements pursuant to 30 U.S.C. 226(j), and then only those who have drilled wells on adjacent lands. However, the very Interior Board of Land Appeals (IBLA) cases cited in the comments—*Nola Gay Ptasynski*, 63 IBLA 240 (1982) and *Bruce Anderson*, 80 IBLA 286 (1984)—refute this assertion by invoking a third mechanism available to the Secretary: assessing compensatory royalty against a Federal lessee as damages. In any event, this rule constitutes an exercise of authority under paragraph (m) of section 226. The Department does not rely on paragraph (j), which was cited as additional authority in the preamble to the proposed rule. Therefore, the Secretary need not be subject to the limits of paragraph (j)—that the lands be adjacent and negotiated agreements voluntary.

The comments city *Ptasynski* and *Anderson* for the proposition that actual drainage is a prerequisite to insisting on provisions in a unitization agreement to assure adequate compensation. However, these cases do not address Secretarial disapproval of unit agreements, but rather the very different issue of assessment of damages for losses already suffered. This rule does not seek to assess damages. Therefore, the cases are not applicable.

The Mineral Leasing Act requires BLM to approve a unit agreement involving Federal lands only when it determines that such approval is in the public interest (30 U.S.C. 226(m)). Congress did not intend BLM to approve drainage of unleased Federal lands by the unit operator with compensation, and did not intend that the owner of adjacent lands should have the discretion to refuse to compensate the Government when seeking BLM approval of a unit agreement for production from Federal lands. The BLM has determined that protecting the Federal royalty interest in unleased unit lands in the manner described in this rule is necessary to serve the public interest. This rule advises those who may seek the Department's approval of a unit agreement, whether before or after production has commenced, as to how it will apply this public interest test of 30 U.S.C. 226(m) to proposed agreements affecting unleased Federal acreage. See *Coors Energy Co.*, 110 IBLA 250 (1989), in which a concurring opinion stated that the Secretary could adopt a regulation providing for the sharing of production income with unleased Federal lands in a PA. 110 IBLA at 263 (Burski concurring).

Some respondents argued that the rule might serve as a disincentive for the Government to lease its unleased lands and that the rule should, therefore, provide for expedited leasing of the affected lands. The BLM has issued policy directives to its field offices to expedite the leasing of all unleased lands at the designation stage of unit formation. This involves offering available BLM-administered lands for lease at the next scheduled lease sale, and requesting the consent of other Federal agencies to offer their affected lands for lease as soon as possible. There is no need to include such internal policy direction in the agency's regulations.

Several comments suggested that limits be placed on the applicability of the royalty rule. One respondent thought that the royalty rule should apply only where actual drainage of unleased lands had been proven. Requiring such actual proof of drainage is unnecessary for lands within a PA. When proposing lands for inclusion in a PA, there is a presumption that such lands are underlain by a common reservoir. Furthermore, tract participation in a PA is normally determined by a simple surface acreage formula rather than by any proven occurrence of drainage. The manner of assessing royalty compensation under the rule is consistent with the approach.

Other comments suggested the rule apply to Federal units but not to those units formed under a non-Federal form of unit agreement where Federal lands comprise less than ten percent of the unit area. The BLM's public interest obligations cover all Federal lands in exploratory units, not just those supervised under a Federal form of unit agreement. The rule applies to all exploratory unit agreements submitted for Federal approval, regardless of the percentage of Federal participation. A final suggestion would exempt from the rule Federal lands that the Government has withheld from leasing. This suggestion was not accepted since it would offer no real protection of the Federal royalty interest in those situations the rule attempts to address, i.e., where the BLM is unable to lease a tract for administrative or statutory reasons, but unit production depletes Federal resources.

One comment requested clarification of the interplay between the proposed regulation and 43 CFR 3100.2 and 3162.2. In fact, there is no direct relationship: Each addresses a separate matter. Sections 3100.2 and 3162.2 govern the obligation of lessees and operators to protect the United States from drainage from leased tracts. That obligation may be satisfied by the joinder of the lease to a unit approved by the Secretary. This rule addresses the very different issue of the approval of a unit that includes unleased lands in its area.

Some comments urged that the royalty rate for unleased lands should be subject to reduction pursuant to 43 CFR 3103.4–1. Under a recent amendment of 43 CFR 3103.4–1, made effective September 10, 1992, a PA is considered a stripper oil well property if it meets the criteria spelled out in that subpart of the regulations, and all participating Federal leases are eligible for royalty rate reduction. Therefore, any royalty assessed under § 3181.5 for unleased Federal lands in a unit PA that qualifies as stripper well property is eligible for rate reduction as well.

Several comments suggested that the BLM should grant suspensions of operations and/or production for leased lands in an anticipated PA whenever adjacent Federal lands are unleased and cannot be leased within a reasonable period of time. This would help when the operator must spud a unit well in order to save leases nearing expiration but is reluctant to do so because of the nearby unleased lands. This matter is outside the scope of this rule, but such suspensions may be considered under BLM's existing authority to grant suspensions as prescribed in 43 CFR 3103.4–2, 43 CFR 3165.1, and in section 18(c) of the model Federal form for unit agreements for unproven areas at 43 CFR 3186.1. As noted earlier, the BLM will make every attempt to lease unleased Federal tracts as early in the unit approval process as possible.

Some respondents were concerned about how the final rule will deal with subsequent joinders—the commitment of a working interest after an agreement has been executed. The BLM has no intention of dictating the terms of joinder to the parties to the unit operating agreement. Such matters as cost and revenue sharing are properly the contractual concerns of the affected parties.

One comment stated that an early version of the royalty compensation provision issued under BLM's interim policy was ambiguous as to which lands and which parties would be subject to the royalty payment provision. It was BLM's intent when it issued the model agreement language of the 1990 interim policy that royalty payment under this provision will be required only for those unleased Federal lands located within the boundary of the PA, that is, those lands that would be entitled to allocated production from the PA if they were leased and committed to the unit agreement. Existing unit agreements that incorporate the earlier language will be so interpreted. The respondent also stated that the terminology used in the draft proposal for lands that are subject to the unit agreement was inconsistent and confusing. The BLM uses the terms "unitized tracts," "unitized lands," and "committed tracts" interchangeably in describing lands for which the basic royalty and working interest owners have committed their interests to the unitization agreement. These terms exclude unleased Federal tracts which, in this context, have no working interest.

Several comments addressed the proposed method of allocating production for royalty purposes and the possibility that the rule would be applied inconsistently. The BLM acknowledges that, while the new rule is simple in principle, it is more complex to explain. Much of this complexity grew out of the attempt to ensure that parties subject to a royalty liability for production attributable to unleased Federal acreage would not be required to pay a double royalty on that production. The BLM's primary concern is to protect the Federal royalty interest in unleased unit lands. The rule does this. However, it would be inappropriate then to dictate in the rule the specific accounting procedure to be used in meeting the Federal royalty obligation. This intentional omission apparently created confusion regarding who is responsible for paying the royalties on unleased Federal lands. The basic intent of the regulation is to capture the windfall royalties on production from unleased Federal lands now paid to other lessors in the PA. To accomplish this, we have implemented a two-phase allocation of production for settlement of the Federal royalty only. In the first phase, a prorated share of production is allocated to the unleased Federal acreage in the PA. Once the specified royalties on that production are paid to the Government, the remaining seven-eighths nonroyalty portion is returned to working interest owners, with no further obligation to pay royalties on that production to either the Government or to any other lessor in the PA. The texts of § 3181.5 and of sections 12 and 17 of the model unit agreement have been amended to clarify this point.

Several comments noted that special tract identification and royalty collection procedures are needed for the Minerals Management Service (MMS), the agency responsible for royalty collections on oil and gas produced from or allocated to Federal lands. While the MMS has not yet developed formal regulations that deal with royalty payments for unleased lands, it has procedural guidelines in effect that address unit agreements containing the royalty collection provision. Formal revision of the 30 CFR part 206 regulations may be considered at a later time.

The BLM also proposed revising § 3183.4 of the unit regulations to specify the effective date of an approved unit agreement as being the date the authorized officer signs the Certification-Determination addendum to the agreement. In commenting on this change, two parties stated that the authorized officer has too much discretion as to the time frame for unit approval and suggested that a specific period be provided within which the authorized officer is required to make a decision. We believe placing such a time limitation in the regulations might impair the authorized officer's ability to complete a proper review of the unit proposal, particularly in cases where more extensive review and coordination than usual are needed before final approval can be granted. However, the BLM will expedite the processing of any unit proposal that involves leases nearing expiration. The amendment of § 3183.4 is adopted as set forth in the proposed rule.

Finally, BLM proposed revising § 3185.1, Appeals, in order to make that section consistent with § 3165.3, which governs administrative appeals on matters related to onshore oil and gas lease operations in general. The change would require aggrieved parties who wish to appeal a decision of the authorized officer under the unit regulations in part 3180 to request a State Director review before pursuing an appeal to the IBLA. Two conflicting comments were received on this proposal. One comment endorsed the proposed change, noting that review by the Interior Board of Land Appeals (IBLA) is a lengthy process and that the BLM State Director may be able to resolve some problems and avoid the need for IBLA involvement. However, another comment questioned whether State Director review prior to IBLA review is required even under § 3165.3. The latter reviewer suggested that appeal procedures under both §§ 3165.3 and 3185.1 be revised to allow an aggrieved party the choice of seeking either State Director or IBLA review. The IBLA in *Southern Utah Wilderness Alliance, Utah Chapter of the Sierra Club*, 122 IBLA 283 (March 5, 1992), examined this question and concluded that State Director review must be sought before an appeal may be taken to the Board. Although this case related to applications for permit to drill, the IBLA cited the applicability of the State Director review requirement to a broader class of instructions, orders, and decisions of the authorized officer. Consequently, any party appealing such action of the authorized officer, under § 3185.1, must first seek State Director review before filing an appeal with the Board.

For the reasons set forth in the proposal and in this document, we are adopting the regulatory amendments contained in the proposed rule with the modifications discussed herein and with minor nonsubstantive changes for clarity.

The principal author of this final rule is Wayne Stevens of the Division of Fluid Mineral Lease and Reservoir Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the ten criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Since BLM will attempt to lease all unleased Federal tracts in proposed exploratory units prior to unit approval, it is anticipated that there will be relatively few approved exploratory units that contain unleased Federal lands within their producing (participating) areas. As a result, the rule will have little effect on costs or prices for consumers, nor would there be a need for increasing Federal, State, or local agency budget or personnel requirements. The rule will not have a gross annual effect on the economy of more than $100 million, nor will it cause major increases in costs or prices for any private or government sector of the economy.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The rule favors no demographic group, imposes no direct or indirect costs on small entities. Because the requirement for payment of compensatory royalties will be actually invoked in only a small number of Federal exploratory units, this rule will not have a significant effect on a substantial number of small entities.

The rule will result in no taking of private property; private property is not affected by the rule. The rule pertains only to the terms under which Federal oil and gas leases may be committed to unit agreements in the future, and merely ensures that the Federal Government receives compensation when its oil and gas resources are produced from a unit well. Therefore, as required by Executive Order 12630, the Department of the Interior has determined and certifies that the rule will not cause a taking of private property and is not a governmental action capable of interference with constitutionally protected property rights.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 3180

Government contracts, Indians-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, and for the reasons stated in the preamble, part 3180, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: September 14, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS—[AMENDED]

1. The authority citation for 43 CFR part 3180 is revised to read as follows:

Authority: 30 U.S.C. 181 and 226.

Subpart 3181—Application for Unit Agreement—[Amended]

2. Section 3181.5 is added to read as follows:

§ 3181.5 Compensatory royalty payment for unleased Federal land.

The unit agreement submitted by the unit proponent for approval by the authorized officer shall provide for payment to the Federal Government of a 12½ percent royalty on production that would be attributable to unleased Federal lands in a PA of the unit if said lands were leased and committed to the unit agreement. The value of production subject to compensatory royalty payment shall be determined pursuant to 30 CFR part 206, except that no additional royalty shall be due from any lessee benefiting from a share in the production attributable to the unleased Federal lands.

Subpart 3183—Filing and Approval of Documents—[Amended]

3. Section 3183.4 is amended by revising paragraph (a) to read as follows:

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (see § 3186.1 of this part for an example), and the unit agreement shall not be deemed effective until the authorized officer has executed the Certification-Determination document. No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

* * * * *

Subpart 3185—Appeals [Amended]

4. Section 3185.1 is revised to read as follows:

§ 3185.1 Appeals.

Any party adversely affected by an instruction, order, or decision issued under the regulations in this part may request an administrative review before the State Director under § 3165.3 of this title. Any party adversely affected by a decision of the State Director after State Director review may appeal that decision as provided in part 4 of this title.

Subpart 3186—Model Forms [Amended]

5. Section 3186.1 is amended by revising section 12 of the model unit agreement, and by redesignating the existing text of section 17 of the model unit agreement as paragraph (a) and adding a new paragraph (b) to section 17, to read as follows:

§ 3186.1 Model onshore unit agreement for unproven areas.

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12. Allocation of Production. All unitized substances produced from a participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development purposes, or for repressuring or recycling in accordance with a plan of development and operations that has been approved by the AO, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts or unitized land and unleased Federal land, if any, included in the participating area established for such production. Each such tract shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land and unleased Federal land, if any, included in said participating area. There shall be allocated to each working interest owner of a tract of unitized land in said participating area, in addition, such percentage of the production attributable to the unleased Federal land within the participating area as the number of acres of such unitized tract included in said participating area bears to the total acres of unitized land in said participating area, for the payment of the compensatory royalty specified in section 17 of this agreement. Allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, including compensatory royalty obligations under section 17, shall be prescribed as set forth in the unit operating agreement or as otherwise mutually agreed by the affected parties. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein, regardless or whether any wells are drilled on any particular part or tract of the participating area. If any gas produced from one participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale and such gas shall be allocated to the participating area from which initially produced as such area was defined at the time that such transferred gas was finally produced and sold.

17. Drainage.

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(b) Whenever a participating area designated under section 9 of this agreement contains unleased Federal lands, the value of 12½ percent of the production that would be allocated to such Federal lands under section 12 of this agreement, if such lands were leased, committed, and entitled to participation, shall be payable as compensatory royalties to the Federal Government. Parties to this agreement holding working interests in leases within the applicable participating area shall be responsible for such compensatory royalty payment on the volume of production reallocated from the unleased Federal lands to their unitized tracts under section 12. The value of such production subject to the payment of said royalties shall be determined pursuant to 30 CFR part 206. Payment of compensatory royalties on the production reallocated from unleased Federal land to committed Federal tracts within the participating area shall fulfill the Federal royalty obligation for such production, and said production shall be subject to no further Federal royalty assessment under section 14 of this agreement. Payment of compensatory royalties as provided herein shall accrue from the date the committed tracts in the participating area that includes unleased Federal lands receive a production allocation, and shall be due and payable monthly by the last day of the calendar month next following the calendar month of actual production. If leased Federal lands receiving a production allocation from the participating area become unleased, compensatory royalties shall accrue from the date the Federal lands become unleased. Payment due under this provision shall end when the unleased Federal tract is leased or when production of unitized substances ceases within the participating area and the participating area is terminated, whichever occurs first.

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