

**FOR FURTHER INFORMATION CONTACT:**

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-124, adopted May 24, 1996, and released June 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-15668 Filed 6-19-96; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 96-126; RM-8815]

#### Radio Broadcasting Services; Cross Hill, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Ron Moore proposing the allotment of Channel 231A at Cross Hill, South Carolina, as the community's first local aural transmission service. Channel 231A can be allotted to Cross Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) southeast to avoid short-spacings to the licensed

sites of Station WGOR(FM), Channel 230C3, Martinez, Georgia, and Station WMUU-FM, Channel 233C, Greenville, South Carolina. The coordinates for Channel 231A at Cross Hill are North Latitude 34-13-04 and West Longitude 81-51-41.

**DATES:** Comments must be filed on or before July 29, 1996, and reply comments on or before August 13, 1996.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ron Moore, 811-A Montague Ave., Greenwood, South Carolina 29649 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:**

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

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For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-15670 Filed 6-19-96; 8:45 am]

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#### 47 CFR Part 73

[MM Docket No. 96-39; RM-8757]

#### Television Broadcasting Services; Irma, WI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** This action dismisses a petition for rule making filed by David A. White requesting the allotment of UHF Television Channel 30+ to Irma, Wisconsin. See 61 FR 10978, March 18, 1996. No comments were received at the Commission stating an intention to file an application for Channel 30+ at Irma, Wisconsin. It is Commission policy to refrain from allotting a channel absent an expression of interest.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MM Docket No. 96-39, adopted May 24, 1996, and released June 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

#### List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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#### DEPARTMENT OF DEFENSE

**48 CFR Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and 252**

[DFARS Case 94-D001]

#### Defense Federal Acquisition Regulation Supplement; U.S. European Command Supplement

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Department of Defense is proposing revisions to the Defense Federal Acquisition Regulation

Supplement (DFARS) to incorporate certain text and clauses presently contained in the U.S. European Command (EUCOM) Supplement. The proposed rule generally applies only to requirements which will be performed wholly or in part in a foreign country.

**DATES:** Comments on the proposed rule and/or the associated information collection requirement should be submitted in writing to the address shown below on or before August 19, 1996, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Amy Williams, PDUSD (A&T) DP (DAR), 3062 Defense Pentagon, Washington, D.C. 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 94-D001 in all correspondence related to this issue.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Firms awarded Department of Defense contracts to be performed in foreign countries must meet requirements imposed by the host country's government concerning local business, labor, environmental, tax, and other laws in addition to meeting the requirements of the U.S. Government and obtaining all customs and tax exemptions to which contractors with the U.S. Government are entitled. The proposed DFARS revisions elevate text and clauses presently contained in the U.S. EUCOM Supplement to provide uniformity in the implementation of these requirements overseas.

##### **B. Regulatory Flexibility Act**

The proposed DFARS rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule only applies to contracts to be solicited, awarded, or performed overseas. More than 90 percent of such contracts are awarded to foreign firms. Those U.S. firms performing contracts overseas are not generally "small entities." Under 5 U.S.C. 601 (3), the definition of "small entity" is the same as the definition of "small business," contained in Section 3 of the Small Business Act (15 U.S.C. 631 *et seq.*), as implemented in 13 CFR 121.403. Section 121.403(a) states that a "business concern eligible for assistance as a small business is a business entity organized for profit, with a place of business located in the United States

and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, materials and/or labor." The proposed rule applies only to contracts which will be awarded or performed, wholly or in part, in foreign countries. Firms which compete for such procurements must meet requirements imposed by the host country's government concerning local business, labor, environmental, tax, and other laws, and obtain permits to operate, hire the mix of employees needed, etc., which are unique to conducting business within a particular country. The nature of these procurements limits the competition for U.S. requirements to those firms which are authorized by the local governments to conduct business within that country. There are only a few small businesses that qualify as "invited contractors" under the Status of Forces Agreements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small entities and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94-D001 in correspondence.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (Pub. L. 104-13) applies because the proposed rule contains reporting and recordkeeping requirements. Necessary requests for approval of the information collection requirements in the proposed rule, as well as extension of existing requirements in Part 216 and related clauses, have been submitted to the Office of Management and Budget under Section 3507(d) of the Act. Information collection requirements relating to retention of records and making books available are already covered under OMB Clearance 9000-0034 (i.e., DFARS 252.216-7003(c) and 252.222-7004(a)). Invoicing requirements are covered under OMB Clearance 0704-0248 (i.e., DFARS 252.229-7001(b), 252.229-7003(d), 252.229-7007, and 252.229-7008(c)). Insurance requirements are covered in OMB Clearance 0704-0216 (i.e., 252.228-7007(c)).

##### **1. Comments**

Comments are invited. Particular comments are solicited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

b. The accuracy of the agency's estimate of the burden of the information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

##### **2. Title, Associated Form, and OMB Number**

a. Approval of the information collection requirements under proposed DFARS 252.216-7003(b)(1) has been requested as a revision and extension to "Defense FAR Supplement, Part 216, Types of Contracts, and Related Clauses in Part 252.216," OMB Number 0704-0259.

b. Approval of the information collection requirements in proposed DFARS 252.229-710 (b) and (c) has been requested as a new clearance, "Defense FAR Supplement Part 229, Taxes, and Related Clauses at 252.229." This information collection is an existing collection in use in the U.S. European Command Supplement without an OMB control number, which is now being incorporated in the DFARS.

##### **3. Needs and Uses**

a. The information collection required by the existing clauses, DFARS 252.216-7000(c) and DFARS 252.216-7001, and the proposed clause, DFARS 252.216-7003(b)(1), is necessary to enable the contracting officer to make a prompt modification to the contract, changing contract unit prices when appropriate. The information is used by contracting officers to evaluate the need for price adjustments.

b. The information collection required by proposed clause DFARS 252.229-7010 is necessary to permit Her Majesty's (HM) Customs to determine the amount of tax relief to be granted and to inform the contracting officer that an attempt to obtain relief has been initiated. After the Contractor obtains tax relief, the contracting officer appropriately adjusts the contract price. If the Contractor does not attempt to obtain relief within the time specified, the contracting officer may deduct from the contract price the amount of relief that would have been allowed if HM Customs and Excise had favorably considered a request for relief.

4. *Affected Public.* Businesses or other for profit.

Extension		New	
252.216-700/7001		252.216-7003	252.229-7010
240	48	1568	96
20	6	196	24
3	1	2	1
60	6	392	24
4	8	4	4

5. *Annual Burden Hours*: 1952.

6. *Number of Respondents*: 246.

7. *Responses per Respondent*: 2.

8. *Number of Responses*: 482.

9. *Average Burden per Response*: 4.

10. *Frequency*: On occasion.

11. *Supplementary Information*. a. i.

DFARS 252.216-7000(c), for which DoD is requesting extension of the existing paperwork burden clearance, requires contractors to notify contracting officers of the amount and effective date of each decrease in any established catalog or market price and permits contractors to submit a written request to increase their established prices.

ii. DFARS 252.216-7001(f), for which DoD is also requesting extension of the paperwork burden clearance, requires contractors, within 30 days of final delivery, to identify the correctness of the hourly earnings of their employees that are relevant to the computations of various labor indices and, upon request, make available all records used in the computation of those indices.

iii. The proposed clause at DFARS 252.216-7003(b)(1) requires the contractor to provide a written request for contract adjustment within 10 days of the increase in established wage rates or material prices, in order for the increase in contract unit price to be effective on the same date that the host government increases the applicable wage rates or material prices.

b. The proposed clause at DFARS 252.229-7010, Relief from Customs Duty (United Kingdom), requires contractors, whose contracts are awarded in the United Kingdom and which require the use of certain fuels and lubricants during performance, to provide specific information to Her Majesty's (HM) Customs and Excise and to provide the contracting officer with evidence that an attempt to obtain relief from customs duty on fuels and lubricants has been initiated.

Lists of Subjects in 48 CFR Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and 252

Government procurement.

Michele P. Peterson,  
Executive Editor, Defense Acquisition  
Regulations Council.

Therefore, 48 CFR Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and

252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 216, 222, 225, 227, 228, 229, 232, 233, 236, 246, and 252 continues to read as follows:

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

#### PART 216—TYPES OF CONTRACTS

2. Section 216.203-4-70 is amended by adding paragraph (c) to read as follows:

##### 216.203-4-70 Additional clauses.

\* \* \* \* \*

(c) *Price adjustment based on foreign government controlled wages or material prices.* (1) The price adjustment clause at 252.216-7003, Economic Price Adjustment—Foreign Government Controlled Wages or Materials, may be used in fixed-price supply and service contracts when—

(i) The contract is to be performed wholly or in part in a foreign country; and

(ii) A foreign government controls wages or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(2) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

#### PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Subpart 222.72 is added to read as follows:

##### Subpart 222.72—Compliance With Host Country Labor Laws

Sec.  
222.7200 Scope of subpart.  
222.7201 Contract clauses.

##### 222.7200 Scope of subpart.

This subpart prescribes contract clauses, with respect to host country labor laws, for use when contracting for services or construction within the host country.

#### 222.7201 Contract clauses.

(a) Use the clause at 252.222-7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States, its possessions, or Puerto Rico.

(b) Use the clause at 252.222-7003, Permit from Italian Inspectorate of Labor, in solicitations and contracts for porter, janitorial, or ordinary facility and equipment maintenance services to be performed in Italy.

(c) Use the clause at 252.222-7004, Compliance with Spanish Social Security Laws and Regulations, in solicitations and contracts for services or construction when contract performance will be in Spain.

#### PART 225—FOREIGN ACQUISITION

4. Subpart 225.9 is added to read as follows:

##### Subpart 225.9—Additional Foreign Acquisition Clauses

Sec.  
225.970 Correspondence in English.  
225.971 Authorization to Perform.

##### 225.970 Correspondence in English.

Use the clause at 252.225-7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

##### 225.971 Authorization to perform.

Use the clause at 252.225-7042, Authorization to Perform, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

#### PART 227—PATENTS, DATA, AND COPYRIGHTS

5. Section 227.676 is added to read as follows:

##### 227.676 Foreign patent interchange agreements.

(a) Patent interchange agreements between the United States and foreign governments provide for the use of patent rights, compensation, free licenses, and the establishment of committees to review and make recommendations on these matters. The

agreements also may exempt the United States from royalty and other payments. The contracting officer shall ensure that royalty payments are consistent with patent interchange agreements.

(b) Assistance with patent rights and royalty payments in the United States European Command (USEUCOM) area of responsibility is available from: HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128, Telephone No: DSN: 430-7474, Commercial: 49-0711-680-7474, Telefax No: 49-0711-680-7408.

## PART 228—BONDS AND INSURANCE

6. Section 228.370 is amended by adding paragraph (f) to read as follows:

### 228.370 Contract clauses.

\* \* \* \* \*

(f) Use the clause at 252.228-7008, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain by other than Spanish contractors or subcontractors.

## PART 229—TAXES

7. Section 229.101 is amended by redesignating paragraphs (d)(i), (d)(ii) and (d)(iii) as (d)(iii), (d)(iv) and (d)(v); and by adding new paragraphs (d)(i), (d)(ii), and (d)(vi) to read as follows:

### 229.101 Resolving tax problems.

\* \* \* \* \*

(d)(i) Tax relief agreements between the United States and foreign governments in Europe which exempt the United States from payment of specific taxes on purchases made for common defense purposes are maintained by the United States European Command (USEUCOM). For further information contact—HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128, Telephone No: DSN: 430-7474, Commercial: 49-0711-680-7474, Telefax No: 49-0711-680-7408.

(ii) Tax relief also may be available in countries which have not signed tax relief agreements. The potential for such relief should be explored in accordance with paragraph (d)(iii) of this section.

\* \* \* \* \*

(vi) See also subpart 229.70 for special procedures for obtaining tax relief and duty-free import privileges when conducting United States acquisitions in foreign countries with foreign contractors.

8. Subpart 229.4 is added to read as follows:

## Subpart 229.4—Contract Clauses

Sec.

229.402 Foreign contracts.

229.402-1-70 Foreign fixed-price contracts.

229.402-70 Additional clauses.

### 229.402 Foreign contracts.

#### 229.402-1-70 Foreign fixed-price contracts.

Use the clause at 252.229-7000, Invoices Exclusive of Taxes or Duties, in solicitations and contracts when a fixed-price contract will be awarded to a foreign contractor.

#### 229.402-70 Additional clauses.

(a) Use the clause at 252.229-7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign contractor in a foreign country. When contract performance will be in Germany, use the clause with its Alternate I.

(b) Use the clause at 252.229-7002, Customs Exemptions (Germany), in solicitations and contracts requiring the import of United States manufactured products into Germany.

(c) Use the clause at 252.229-7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(d) Use the clause at 252.229-7004, Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import of supplies for construction, development, maintenance, and operation of Spanish-American installations and facilities.

(e) Use the clause at 252.229-7005, Tax Exemptions (Spain), in solicitations and contracts when contract performance will be in Spain.

(f) Use the clause at 252.229-7006, Value Added Tax Exclusion (United Kingdom), in solicitations and contracts when contract performance will be in the United Kingdom.

(g) Use the clause at 252.229-7007, Verification of United States Receipt of Goods, in solicitations issued and contracts awarded in the United Kingdom.

(h) Use the clause at 252.229-7008, Relief from Import Duty (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom.

(i) Use the clause at 252.229-7009, Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom) in solicitations issued and contracts awarded in the United Kingdom for fuels (gasoline or diesel) and lubricants used in passenger vehicles (excluding taxis).

(j) Use the clause at 252.229-7010, Relief from Customs Duty on Fuel

(United Kingdom), in solicitations issued and contracts awarded in the United Kingdom calling for the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles.

9. Subpart 229.70 is added to read as follows:

## Subpart 229.70—Special Procedures for Overseas Contracts

Sec.

229.7000 Scope of subpart.

229.7001 Tax exemption in Europe.

229.7002 Tax exemption in Spain.

229.7003 Tax exemption in the United Kingdom.

229.7003-1 Value added tax.

229.7003-2 Import duty.

229.7003-3 VAT/Duty problem resolution.

229.7003-4 Information required by HM Customs and Excise.

### 229.7000 Scope of subpart.

This subpart prescribes procedures to be used by contracting officers to obtain tax relief and duty-free import privileges when conducting United States Government acquisitions in foreign countries with foreign contractors.

#### 229.7001 Tax exemption in Europe.

When standard commercial items or services are being acquired, the contracting officer shall require the contractor to identify and separately state the tax amount from which the United States is exempt and which has been excluded from the contract price. The contracting officer will compare the excluded amount with the tax relief authorized by tax relief agreements to ensure that the United States Government is accorded the full benefit of all tax exemptions (see also 229.402-70(a) and the clause at 252.229-7001).

#### 229.7002 Tax exemption in Spain.

(a) The Joint United States Military Group (JUSMG), Spain Policy Directive 400.4, or subsequent directive, applies to all United States contracting offices contracting for services or supplies in Spain which require the introduction of material or equipment into Spain.

(b) Upon award of a contract with a "Direct Contractor," as defined in the clause at 252.229-7004, the contracting officer will notify JUSMG-MAAG Madrid, Spain, and HQ 16AF/LGTT and forward three copies of the contract to JUSMG-MAAG, Spain.

(c) If copies of the contract are not available and duty-free import of equipment or materials is urgent, the contracting officer will send JUSMG-MAAG three copies of the "Letter of Intent" or a similar document indicating the pending award. In these cases, authorization for duty-free import will

be issued by the Government of Spain. Upon formal award, the contracting officer will forward three copies of the completed contract to JUSMG-MAAG, Spain.

(d) The contracting officer will notify JUSMG-MAAG, Spain, and HQ 16AF/LGTT of ports-of-entry and identify the customs agents who will clear property on their behalf. Additional documents required for port-of-entry and customs clearance can be obtained by contacting HQ 16AF/LGTT. This information will be passed to the Secretaria General Tecnica del Ministerio de Hacienda (Technical General Secretariat of the Ministry of Finance). A list of customs agents may be obtained from the 600 ABG, APO AE 09646.

#### **229.7003 Tax exemption in the United Kingdom.**

This section contains procedures to be followed in securing relief from the British Value Added Tax (VAT) and import duties.

#### **229.7003-1 Value added tax.**

(a) United States Government purchases qualifying for tax relief are equipment, materials, facilities, and services for the common defense effort and for foreign aid programs.

(b) In order to facilitate the resolution of issues concerning specific waivers of import duty or tax exemption for United States Government purchases (see 229.7003-3), contracting offices shall provide the name and activity address of personnel who have been granted warranted contracting authority to Her Majesty's (HM) Customs and Excise at the following address: HM Customs and Excise, International Customs Division G, Branch 4, Adelaide House, London Bridge, London EC4R 9DB.

#### **229.7003-2 Import duty.**

No import duty shall be paid by the United States and contract prices shall be exclusive of duty, except when the administrative cost compared to the low dollar value of a contract makes it impracticable to obtain relief from contract import duty. In this instance, the contracting officer shall document the contract file with a statement that

(1) The administrative burden of securing tax relief under the contract was out of proportion to the tax relief involved;

(2) It is impracticable to secure tax relief;

(3) Tax relief is therefore not being secured; and

(4) The acquisition does not involve the expenditure of any funds to establish a permanent military installation.

#### **229.7003-3 VAT/Duty problem resolution.**

In the event a VAT or import duty problem cannot be resolved at the contracting officer's level, refer the issue to HQ Third Air Force, Staff Judge Advocate, Unit 4840, Box 45, APO AE 09459. Direct contract with HM Customs and Excise in London is prohibited.

#### **229.7003-4 Information required by HM Customs and Excise.**

(a) *School bus contracts.* Provide one copy of the contract and all modifications to HM Customs and Excise.

(b) *Road fuel contracts.* For contracts which involve an application for relief from duty on the road fuel used in performance of the contract provide—

(1) To HM Customs and Excise—

(i) Contract number;

(ii) Name and address of contractor;

(iii) Type of work (e.g., laundry, transportation);

(iv) Area of work; and

(v) Period of performance.

(2) To the Regional Office of HM Customs and Excise to which the contractor applied for relief from the duty on road fuel—one copy of the contract.

(c) *Other contracts awarded to United Kingdom firms.* Provide information when requested by HM Customs and Excise.

#### **PART 232—CONTRACT FINANCING**

10. Section 232.806-70 is added to read as follows:

#### **§ 232.806-70 Alternate contract clause for overseas contracting.**

Use the clause at 252.232-7008, Assignment of Claims (Overseas), in place of FAR clause 52.232-23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

#### **PART 233—PROTESTS, DISPUTES, AND APPEALS**

11. Section 233.215-70 is added to read as follows:

#### **§ 233.215-70 Additional contract clause.**

Use the clause at 252.233-7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside of the United States, its possessions, or Puerto Rico, unless otherwise provided for in a Government-to-Government agreement.

#### **PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

12. Section 236.570 is amended by adding paragraph (c) to read as follows:

#### **§ 236.570 Additional provisions and clauses.**

\* \* \* \* \*

(c) See also 246.710(4) for additional clause applicable to construction contracts to be performed in Germany.

#### **PART 246—QUALITY ASSURANCE**

13. Section 246.710 is amended by adding paragraph (4) to read as follows:

#### **§ 246.710 Contract clauses.**

\* \* \* \* \*

(4) Use the clause at 252.246-7002, Warranty of Construction (Germany), in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

14. Section 252.216-7003 is added to read as follows:

#### **§ 252.216-7003 Economic Price Adjustment—Foreign Government Controlled Wages or Materials.**

As prescribed in 216.203-4-70(c), use the following clause:

Economic Price Adjustment—Foreign Government Controlled Wages or Materials (XXX XXXX)

(a) The Contractor represents that the prices set forth in this contract—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the Government or \_\_\_\_\_ (Contractor—insert name of host country); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the Government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor's actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the host government increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor's written request for contract adjustment within 10 days of the change. If the Contractor's request is received later, the effective date shall be the date that the Contracting Officer receives the Contractor's request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the host government decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the host government's rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates/prices set by the host government. The Contractor shall make available its books and records which support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)

15. Section 252.222-7002 is added to read as follows:

**§ 252.222-7002 Compliance with Local Labor Laws (Overseas).**

As prescribed in 222.7201(a), use the following clause:

Compliance With Local Labor Laws (Overseas) (XXX XXXX)

(a) The Contractor shall comply with all—  
(1) Local laws, regulations, and labor union agreements governing work hours; and

(2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes the Contractor's obligation to handle and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with Federal Acquisition Regulation 31.205-15(a) and 31.205-47(d), the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting Officer.

(End of clause)

16. Section 252.222-7003 is added to read as follows:

**252.222-7003 Permit from Italian Inspectorate of Labor.**

As prescribed in 222.7201(b), use the following clause:

Permit From Italian Inspectorate of Labor (XXX XXXX)

Prior to the date set for commencement of work and services under this contract, the

Contractor shall obtain the prescribed permit from the Inspectorate of Labor having jurisdiction over the work site, in accordance with Article 5g of Italian Law Number 1369, dated October 23, 1960. The Contractor shall ensure that a copy of the permit is available at all reasonable times for inspection by the Contracting Officer or an authorized representative. Failure to obtain such permit may result in termination of the contract for the convenience of the United States Government, at no cost to the United States Government.

(End of clause)

17. Section 252.222-7004 is added to read as follows:

**252.222-7004 Compliance with Spanish Social Security Laws and Regulations.**

As prescribed in 222.7201(c), use the following clause:

Compliance With Spanish Social Security Laws and Regulations (XXX XXXX)

(a) The Contractor shall comply with all Spanish Government social security laws and regulations. Within 30 calendar days after the start of contract performance, the Contractor shall ensure that copies of the documents identified in paragraph (a)(1) through (a)(5) of this clause are available at all reasonable times for inspection by the Contracting Officer or an authorized representative. The Contractor shall retain the records in accordance with the Audit and Records clause of this contract.

(1) TC1—Certificate of Social Security Payments;

(2) TC2—List of employees;

(3) TC2/1—Certificate of Social Security Payments for Trainees;

(4) Nominal (pay statements) signed by both the employee and Contractor; and

(5) INFORME DE SITUACION DE EMPRESA (Report of the condition of the enterprise) from the Ministerio de Trabajo y S.S., Tesoreria General de la Seguridad Social (annotated with the pertinent contract number(s) next to the employee's name).

(b) All TC1's, TC2's, and TC2/1's, shall contain a representation that they have been paid by either the Social Security Administration Office or the Contractor's bank or savings institution. Failure by the Contractor to comply with the requirements of this clause may result in termination of the contract under the clause entitled "Default." (End of clause)

18. Section 252.225-7041 is added to read as follows:

**252.225-7041 Correspondence in English.**

As prescribed in 225.970, use the following clause:

Correspondence in English (XXX XXXX)

The Contractor shall ensure that all contract correspondence which is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

19. Section 252.225-7042 is added to read as follows:

**252.225-7042 Authorization to Perform.**

As prescribed in 225.971, use the following clause:

Authorization To Perform (XXX XXXXX)

The Contractor represents that it has been duly authorized to operate and do business in the country or countries in which this contract is to be performed. The Contractor also represents that it will fully comply with all laws, decrees, labor standards, and regulations of such country or countries, during the performance of this contract.

(End of clause)

20. Section 252.228-7008 is added to read as follows:

**252.228-7008 Compliance with Spanish Laws and Insurance.**

As prescribed at 228.370(f), use the following clause:

Compliance With Spanish Laws and Insurance (XXX XXXXX)

(a) The Contractor shall, without additional expense to the United States Government, comply with all applicable Spanish Government laws pertaining to sanitation, traffic, security, employment of labor and all other laws relevant to the performance of this contract. The Contractor shall hold the United States Government harmless and free from any liability resulting from the Contractor's failure to comply with such laws.

(b) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, all workmen's compensation, employees' liability, bodily injury insurance, and other required insurance adequate to cover the risk assumed by the Contractor. The Contractor shall indemnify and hold harmless the United States Government from liability resulting from all claims for damages as a result of death or injury to personnel or damage to real or personal property related to the performance of this contract.

(c) The Contractor agrees to represent in writing to the Contracting Officer, prior to commencement of work and not later than 15 days after the date of the "Notice to Proceed," that the Contractor has obtained the required types of insurance in the following minimum amounts. The representation shall also state that the Contractor will promptly notify the Contracting Officer of any notice of cancellation of insurance or material change in insurance coverage which could affect the United States Government's interests.

Type of insurance	Coverage/person	Coverage/accident	Property damage
Comprehensive ..... General Liability	\$300,000.00	\$1,000,000.00	\$100,000.00

(d) The Contractor shall provide the Contracting Officer with a similar representation for all subcontractors who will perform work under this contract.

(e) Insurance policies required herein shall be purchased from Spanish insurance companies or other insurance companies legally authorized to conduct business in Spain. Such policies shall conform to Spanish laws and regulations and shall—

(1) Contain provisions requiring submission to Spanish law and jurisdiction of any problem that may arise with regard to the interpretation or application of the clauses and conditions of the insurance policy;

(2) Contain a provision authorizing the insurance company, as subrogee of the insured entity, to assume and attend to directly, with respect to any person damaged, the legal consequences arising from the occurrence of such damages;

(3) Contain a provision worded as follows: "The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under this policy";

(4) Not contain any deductible amount or similar limitation; and

(5) Not contain any provisions requiring submission to any type of arbitration.

(End of clause)

21. Section 252.229-7000 is added to read as follows:

**252.229-7000 Invoices Exclusive of Taxes or Duties.**

As prescribed at 229.402-1-70, use the following clause:

Invoices Exclusive of Taxes or Duties (XXX XXXX)

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available.

(End of clause)

22. Section 252.229-7001 is added to read as follows:

**252.229-7001 Tax Relief.**

As prescribed at 229.402-70(a), use the following clause:

Tax Relief (XXX XXXX)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's Government. The following taxes or duties have been excluded from the contract prices.

NAME OF TAX: \_\_\_\_\_  
(Contractor insert)

RATE (PERCENTAGE): \_\_\_\_\_  
(Contractor insert)

(b) The Contractor's invoice shall separately list the gross price, amount of tax deducted, and the net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall still ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

**Alternate I. (XXX XXXX)**

As prescribed at 229.402-70(a), add the following paragraph (d) to the basic clause (Note: The "Offshore Steuerabkommen" refers to the agreement on tax relief at 252.229-7010):

(d) Tax relief will be claimed in Germany pursuant to the United States-German Tax Agreement (Offshore Steuerabkommen). The Contractor shall use "Abwicklungsschein fuer abgabenbegünstigte Lieferungen/Leistungen nach dem Offshore Steuerabkommen" (Performance certificate for tax-free deliveries/performance according to the offshore tax relief agreement) or other documentary evidence acceptable to the German tax authorities. All purchases made and paid for on a tax-free basis during a 30-day period may be accumulated, totaled, and reported as tax-free.

23. Section 252.229-7002 is added to read as follows:

**252.229-7002 Customs Exemptions (Germany)**

As prescribed at 229.402-70(b), use the following clause:

Customs Exemptions (Germany) (XXX XXXX)

Imported products required for the direct benefit of the United States Forces are authorized to be acquired duty-free by contractors in accordance with the provisions of the "Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense."

(End of clause)

24. Section 252.229-7003 is added to read as follows:

**252.229-7003 Tax Exemptions (Italy).**

As prescribed at 229.402-70(c), use the following clause:

**Tax Exemptions (Italy) (XXX XXXX)**

(a) The Contractor represents that the contract prices, including the prices in subcontracts awarded hereunder, do not include taxes from which the United States Government is exempt.

(b) The United States Government is exempt from payment of Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy.

(1) Upon receipt of the invoice, the paying office will stamp the following statement on one copy of the invoice:

"I represent that this invoice is true and correct and reflects expenditures made in Italy for the Common Defense by the United States Government pursuant to international agreements. The amount to be paid does not include the IVA tax because this transaction is not subject to the tax in accordance with Article 72 of Decree Law 633 of 26 October 1972."

(2) The copy with the representation, signed by an authorized Government official, will be returned together with payment to the Contractor. The payment will not include the amount of the IVA tax.

(3) The Contractor must retain this copy of the invoice with the representation to substantiate non-payment of the IVA tax.

(c) In addition to the IVA tax, purchases by the United States Forces in Italy are exempt from the following taxes:

(1) Imposta di Fabbricazione (Production Tax for Petroleum Products).

(2) Imposta di Consumo (Consumption Tax for Electrical Power).

(3) Dazi Doganali (Customs Duties).

(4) Tassa di Sbarco e d'Imbarco sulle Merci Transportate per Via Aerea e per Via Marittima (Port Fees).

(5) Tassa de Circolazione sui Veicoli (Vehicle Circulation Tax).

(6) Imposta di Registro (Registration Tax).

(7) Imposta di Bollo (Stamp Tax).

(d) The Contractor's administrative procedures for claiming and validating the exemptions are as follows:

(1) Contract offer price shall not reflect IVA or any other tax or duty.

(2) Contract number must be set forth on Contractor invoices, which should state the exemptions claimed pursuant to Art. 72, Decree No. 633, dated October 26, 1972, for IVA exemption.

(3) Fiscal code for payments made by Aviano Air Base Appropriated Funds is: 91000190933.

(4) Questions may be addressed to the Ministry of Finance, 11th District, Room (06) 5910982.

(End of clause)

25. Section 252.229-7004 is added to read as follows:

**252.229-7004 Status of Contractor as a Direct Contractor (Spain).**

As prescribed at 229.402-70(d), use the following clause:

Status of Contractor as a Direct Contractor (Spain) (XXX XXXX)

(a) "Direct Contractor" means an individual, company, or entity with whom an agency of the United States Department of Defense has executed a written agreement which allows duty-free import of equipment, materials and supplies into Spain for the construction, development, maintenance, and operation of Spanish-American installations and facilities.

(b) The Contractor is hereby designated a "Direct Contractor" under the provisions of Complementary Agreement 5, articles 11, 14, 15, 17, and 18 of the Agreement on Friendship, Defense and Cooperation between the United States Government and the Kingdom of Spain, dated July 2, 1982. The Agreement relates to contracts to be performed in whole or part in Spain, the provisions of which are hereby incorporated into and made a part of this contract by reference.

(c) The Contractor shall apply to the appropriate Spanish authorities for approval of status as a "Direct Contractor" in order to complete duty-free import of non-Spanish materials and equipment represented as necessary for contract performance by the Contracting Officer. Material/equipment orders placed prior to official notifications of such approval shall be at the Contractor's own risk. The Contractor must submit its documentation in sufficient time to assure processing by the appropriate United States and Spanish Government agencies prior to the arrival of material/equipment in Spain. Seasonal variations in processing times are common and the Contractor should program its projects accordingly. Any delay or expense arising directly or indirectly from this process shall not excuse untimely performance (except as expressly allowed in other provisions), constitute a direct or constructive change, or otherwise provide a basis for additional compensation or adjustment of any kind.

(d) To ensure that all duty-free imports are properly accounted for, exported, or disposed of, in accordance with Spanish law, the Contractor shall obtain a written bank letter of guaranty payable to the Treasurer of the United States, or such other authority as may be designated by the Contracting Officer, in the amount set forth in paragraph (g) of this clause, prior to effecting any duty-free imports for the performance of this contract.

(e) If the Contractor fails to obtain the required guaranty, the Contractor agrees that the Contracting Officer may withhold a portion of the contract payments in order to establish a fund, in the amount set forth in paragraph (g) of this clause. The fund shall be used for the payment of import taxes in the event that the Contractor fails to properly account for, export, or dispose of equipment, materials, or supplies imported duty-free.

(f) The amount of the bank letter of guaranty or size of the fund required under paragraphs (d) or (e) of this clause shall normally be 5 percent of the contract value.

However, if the Contractor demonstrates to the Contracting Officer's satisfaction that the amount retained by the United States Government or guaranteed by the bank is excessive, the amount shall be reduced to an amount commensurate with contingent import tax and duty-free liability. This bank guaranty or fund shall not be released to the Contractor until the Spanish General Directorate of Customs verifies the accounting, export, or disposition of the equipment, material, or supplies imported on a duty-free basis.

(g) The amount required under paragraph (d), (e), or (f) of this clause is

(Contracting Officer insert amount at time of contract award.

(h) The Contractor agrees to insert the provisions of this clause, including this paragraph (h), in all subcontracts.

(End of clause)

26. Section 252.229-7005 is added to read as follows:

**252.229-7005 Tax Exemptions (Spain).**

As prescribed at 229.402-70(e), use the following clause:

Tax Exemptions (Spain) (XXX 1995)

(a) The Contractor represents that the contract prices, including subcontract prices, do not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(b) In accordance with tax relief agreements between the United States Government and the Spanish Government and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes:

- (1) Derechos de Aduana (Customs Duties).
- (2) Impuesto de Compensacion a la Importacion (Compensation Tax on Imports)
- (3) Transmisiones Patrimoniales (Property Transfer Tax).
- (4) Impuesto Sobre el Lujo (Luxury Tax).
- (5) Actos Juridicos Documentados (Legal Official Transactions).
- (6) Impuesto Sobre el Trafico de Empresas (Business Trade Tax).
- (7) Impuestos Especiales de Fabricacion (Special Products Tax).
- (8) Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its by-products when CAMPSA coupons are used).
- (9) Impuesto Sobre el Uso de Telefonos (Telephone Tax).
- (10) Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax).
- (11) Impuesto Industrial (Industrial Tax).
- (12) Impuesto de Rentas sobre el Capital (Capital Gains Tax).
- (13) Plus Valia (Increase on Real Property).
- (14) Contribucion Territorial Urbana (Metropolitan Real Estate Tax).
- (15) Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax).
- (16) Impuestos de la Diputacion (County Service Charges).
- (17) Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges).

(End of clause)

27. Section 252.229-7006 is added to read as follows:

**252.229-7006 Value Added Tax Exclusion (United Kingdom).**

As prescribed at 229.402-70(f), insert the following clause:

Value Added Tax Exclusion (United Kingdom) (XXX XXXX)

The supplies or services identified in this contract or purchase order are to be delivered at a price exclusive of Value Added Tax under arrangements between the appropriate United States authorities and Her Majesty's Customs and Excise (Reference Priv 46/7). By executing this contract, the Contracting Officer certifies that these supplies and/or services are being purchased for United States Government official purposes only.

(End of clause)

28. Section 252.229-7007 is added to read as follows:

**252.229-7007 Verification of United States Receipt of Goods.**

As prescribed at 229.402-70(g), use the following clause:

Verification of United States Receipt of Goods (XXX XXXX)

The Contractor shall insert the following statement on all Material Inspection and Receiving Reports (DD Form 250 series) for Contracting Officer approval:

"I represent that the items listed on this invoice have been received by the United States."

(End of clause)

29. Section 252.229-7008 is added to read as follows:

**252.229-7008 Relief from Import Duty (United Kingdom).**

As prescribed at 229.402-70(h), use the following clause:

Relief From Import Duty (United Kingdom) (XXX XXXX)

Any import dutiable articles, components, or raw materials supplied to the United States Government under this contract shall be exclusive of any United Kingdom import duties. Any imported items supplied for which import duty has already been paid will be supplied at a price exclusive of the amount of import duty paid. The Contractor is advised to contact Her Majesty's (HM) Customs and Excise in order to obtain a refund upon completion of the contract (Reference HM Customs and Excise Notice No. 431, February 1973, entitled "Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom.")

(End of clause)

30. Section 252.229-7009 is added to read as follows:



**252.229-7009 Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom).**

As prescribed at 229.402-70(i), use the following clause:

Relief From Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom) (XXX XXXX)

(a) Pursuant to an agreement between the United States Government and Her Majesty's (HM) Customs and Excise, fuels and lubricants used by passenger vehicles (except taxis) in the performance of this contract will be exempt from customs duty and value added tax. Therefore, the procedures outlined in HM Customs and Excise Notice 431B dated August 1982, and any amendment thereto, shall be used to obtain relief from both Customs Duty and value added tax for fuel used under the contract. These procedures shall apply to both loaded and unloaded miles. The unit prices should be based on the recoupment by the Contractor of Customs Duty in accordance with the following allowances:

(1) Vehicles (except taxis) with a seating capacity of less than 29, one gallon for every 27 miles.

(2) Vehicles with a seating capacity of 29-53, one gallon for every 13 miles.

(3) Vehicles with a seating capacity of 54 or more, one gallon for every 10 miles.

(b) In the event the mileage of any route is increased or decreased within 10 percent, resulting in no change in route price, the Customs Duty shall be reclaimed from HM Customs and Excise on actual mileage performed.

(End of clause)

31. Section 252.229-7010 is added to read as follows:

**252.229-7010 Relief from Customs Duty on Fuel (United Kingdom).**

As prescribed at 229.402-70(j), use the following clause:

Relief From Customs Duty on Fuel (United Kingdom) (XXX 1995)

(a) Pursuant to an agreement between the United States Government and Her Majesty's (HM) Customs and Excise, it is possible to obtain relief from customs duty on fuels and lubricants used in support of certain contracts. If vehicle fuels and lubricants are used in support of this contract, the Contractor shall seek relief from customs duty in accordance with HM Customs Notice No. 431, February 1973, entitled "Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom." Application should be sent to the contractor's local Customs and Excise Office.

(b) Specific information should be included in the request for tax relief, such as the number of vehicles involved, types of vehicles, rating of vehicles, fuel consumption, estimated mileage per contract period, and any other information which will assist HM Customs and Excise in determining the amount of relief to be granted.

(c) Within 30 days after the award of this contract, the Contractor shall provide the Contracting Officer with evidence that an attempt to obtain such relief has been initiated. In the event the Contractor does not attempt to obtain relief within the time specified, the Contracting Officer may deduct from the contract price the amount of relief that would have been allowed if HM Customs and Excise had favorably considered the request for relief.

(d) The amount of any rebate granted by HM Customs and Excise shall be paid in full to the United States Government. Checks shall be made payable to the Treasurer of the United States and forwarded to the Administrative Contracting Officer.

(End of clause)

32. Section 252.232-7008 is added to read as follows:

**252.232-7008 Assignment of Claims (Overseas).**

As prescribed at 232.806-70, use the following clause:

Assignment of Claims (Overseas) (XXX XXXX)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and

(3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential" be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

33. Section 252.233-7001 is added to read as follows:

**252.233-7001 Choice of Law (Overseas).**

As prescribed at 233.215-70, use the following clause:

Choice of Law (Overseas) (XXX XXXX)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of contract appeals and the United States court of Federal claims for the hearing and determination of any and all Disputes which may arise under the Disputes clause of this contract.

(End of clause)

34. Section 252.246-7002 is added to read as follows:

**252.246-7002 Warranty of Construction (Germany).**

As prescribed at 246.710(4), use the following clause:

Warranty of Construction (Germany) (XXXX)

(a) In addition to any other representations in this contract, the Contractor represents, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for the period(s) specified in Section 13, VOB, Part B, commencing from the date of final acceptance of the work under this contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, from the date the Government takes possession.

(c) The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to Government-owned or -controlled real or personal property when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work

performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government as directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the Contractor's negligence, or the negligence of a subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor the repair of any damage resulting from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

[FR Doc. 96-15222 Filed 6-19-96; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 652

[I.D. 061396A]

#### Atlantic Surf Clam and Ocean Quahog Fisheries; Notice of Availability for Amendment 9

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

**ACTION:** Notice of availability of a fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) for Secretarial review and is requesting comments from the public. The amendment would revise overfishing definitions for Atlantic surf clams and ocean quahogs.

**DATES:** Comments must be received on or before August 13, 1996.

**ADDRESSES:** Send comments to Dr. Andrew Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope

“Comments on Overfishing Definitions for Clams and Quahogs.”

Copies of Amendment 9 and the environmental assessment are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, 508-281-9104.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, on behalf of the Secretary, upon receiving the plan or amendment, immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review, and publish a document that the plan or amendment is available for public review and comment. NMFS will consider the public comments in determining whether to approve the amendment.

Amendment 9, if approved, would revise overfishing definitions for the stocks managed under the FMP in compliance with the NOAA Guidelines for Fishery Management Plans (50 CFR part 602).

During its discussions of the 1996 quota recommendations, the Council considered revising the overfishing definitions specified in the FMP. Overfishing is presently defined for both species in terms of actual yield levels—that is, overfishing is defined as harvests in excess of the specified quota levels. This definition does not incorporate biological considerations to protect against overfishing. NMFS has concluded that a harvesting strategy based on Council policy is no longer acceptable, since it depends on the Council taking appropriate action, rather than adhering to a rate-based biological standard. The overfishing definition proposed by the Council for surf clams as contained in Amendment 9 is a fishing mortality rate of  $F_{20\%}$  (20 percent of maximum spawning potential (MSP)), which equates to an annual exploitation rate of 15.3 percent. The overfishing definition proposed by the Council for ocean quahogs as contained in Amendment 9 is a fishing mortality of  $F_{25\%}$  (25 percent of MSP), which equates to an annual exploitation rate of 4.3 percent.

The receipt date for this amendment is June 12, 1996. No proposed or final regulations will be published for this amendment, because, if it is approved, no changes will be needed in the codified regulatory text that implements this FMP.

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

Dated: June 14, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96-15661 Filed 6-14-96; 4:52 pm]

BILLING CODE 3510-22-F

#### 50 CFR Part 652

[Docket No. 960531155-6155-01; I.D. 050996B]

#### Atlantic Surf Clam and Ocean Quahog Fishery; Control Date

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

**ACTION:** Advance notice of proposed rulemaking; consideration of a control date.

**SUMMARY:** NMFS announces that the Mid-Atlantic Fishery Management Council (Council) is considering limiting future access to anyone entering that portion of the ocean quahog (*Arctica islandica*) fishery, commonly referred to as the Maine mahogany quahog fishery, that is managed through the Maine Mahogany Quahog Experimental Fishery Program after June 20, 1996 (control date). Future access to the Maine mahogany quahog resource in the exclusive economic zone (EEZ) will not be assured beyond the control date if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This document is intended to promote awareness of potential eligibility criteria for future access to that portion of the ocean quahog fishery managed through the Maine Mahogany Quahog Experimental Fishery Program and to discourage new entries into this fishery based on economic speculation while the Council contemplates whether and how access should be controlled. The potential eligibility criteria may be based on historical participation, defined as any number of trips having any documented amount of ocean quahog landings. This document, therefore, gives the public notice that they should locate and preserve records