application rates will not result in significant buildup in the environment. Data indicate that any parent material of CPPU left in the soil will be strongly bound to soil particles and will not move.

D. Cumulative Effects

There are no cumulative effects expected since CPPU is not taken up by plants from the soil. It slowly degrades to mineral end points. Its low use rates and infrequent applications are not conducive to buildup in the environment.

E. Safety Determination

1. *U.S. population.* As pointed out above in dietary exposure-food, the percentage of the RfD consumed by treating the subject crops represents only slightly more than 1% of the estimated safe level for the most sensitive segment of the population, non-nursing infants.

2. *Infants and children.* No developmental, reproductive or fetotoxic effects have been associated with CPPU. The calculation of safety margins with respect to these segments of the population were taken into consideration in the TMRC estimates with respect to the risk associated with the percentage of the reference dose being consumed.

F. International Tolerances

There is no Codex maximum residue level established for CPPU. However, CPPU is registered for use on grapes and other crops in Japan, Chile, Mexico, and South Africa.

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7644–5]

Interpretation of Regulations Related to Payments to Consultants Under Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA's Appropriation Act limits the Agency's participation in the amounts recipients pay to consultants to the maximum daily rate of pay for Level IV of the Executive Schedule. Recently, questions have been posed regarding how to interpret both the statutory consultant fee limitation and the EPA regulation. The purpose of the attached document is to provide EPA grant specialists and project officers guidance regarding the Agency's interpretation of the appropriation act language as well as the regulatory provisions. This notice explains for EPA applicants and recipients how EPA applies the payment limit.

DATES: The attached document becomes effective on April 7, 2004.

FOR FURTHER INFORMATION CONTACT: William Hedling, 1200 Pennsylvania Ave., Mail Stop 3903 R, Washington, DC 20460, Telephone—202–564–5377, E-Mail—*Hedling.William@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA's appropriation act limits the Agency's participation in the amounts recipients pay consultants to the maximum daily rate of pay for Level IV of the Executive Schedule. This limit was first established in EPA's Fiscal Year 1978 appropriation act and Congress clarified the scope of the limit in EPA's Fiscal Year 1979 appropriation act. The Agency applies the limit to EPA assistance agreements through EPA's Uniform Administrative Requirements and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (40 CFR 30.27(b)) and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 CFR 31.36(j)). In addition, EPA's regulations provide that contracts with firms for services which are awarded using the prescribed procurement requirements are not subject to the consultant fee limitations (40 CFR 30.27(b) and 31.36 (j)).

Recently, there have been some questions raised regarding EPA's application of the limit. The purpose of the attached document is to provide EPA grant specialists and project officers guidance regarding the Agency's interpretation of the appropriation act language as well as the regulatory provisions. This notice provides information to EPA applicants and recipients to make them aware of how EPA applies the payment limit. This guidance clarifies existing EPA policy and applies to all EPA assistance agreements, regardless of award dates.

This document reiterates the limits under EPA's appropriation act and makes clear that:

- If a recipient, or its contractor, chooses to pay more than the consultant fee cap ($524.72 per day in 2004), the recipient must use its own funds to pay the difference. Also, if the assistance agreement includes a recipient indirect cost rate, the recipient can apply it only to allowable costs, not to amounts in excess of the consultant fee cap. Finally, recipients cannot use the amount in excess of the consultant fee cap for cost sharing purposes. (The consultant fee cap does not apply to reasonable consultant overhead or travel direct costs. Recipients may reimburse these direct costs in accordance with their normal practices.)
- If a consultant is paid on an hourly basis, EPA will not participate in more than the hourly equivalent of the rate ($65.59 per hour for 2004), nor will EPA participate in more than the maximum daily rate if a consultant paid on an hourly basis works more than 8 hours in a day. Further, if a consultant works less than 8 hours in a day, EPA will not participate in more than the hourly equivalent rate for each hour worked even if the consultant is paid on a daily basis. There may be cases where recipients believed that EPA would participate in the maximum daily rate, even if the consultant worked less than 8 hours in a day. In such cases, recipients and EPA Grants Management Offices should document the situation and may request the Director, Grants Administration Division, to waive the hourly limit under section 9 of the EPA Order.
- The consultant fee cap does not apply to contracts with firms or individuals that are awarded pursuant to the procurement procedures under 40 CFR Parts 30 and 31 (40 CFR 30.27(b) and 40 CFR 31.36(j)(2)) so long as the terms of the contract do not provide the recipient with responsibility for the selection, direction, and control of the individual(s) who will be providing services under the contract. Conversely, the consultant fee cap does apply to contracts with firms or individuals that are awarded under the procurement procedures of 40 CFR Parts 30 and 31 if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. The cap does not apply to fixed priced or lump sum contracts for specified products such as reports or delivery of a training course. Applicants or recipients who have questions concerning whether an individual is a consultant subject to the fee cap should contact the appropriate EPA project officer or grants specialist.
- The consultant fee cap does not apply to contracts for technical advisory services awarded competitively under EPA's Superfund Technical Assistance Grant (TAG) program regulations at 40 CFR 35.4205 provided that the terms of the contract indicate that the technical advisor has the discretion of an independent contractor and do not vest the TAG recipient with responsibility

for the direction and control of the technical advisor.

The "Consultant Fees Under EPA Assistance Agreements Policy'' (GPI 04–04), is attached following this announcement.

Authority: Pub. L. 95–119, 40 CFR 30 and 31.

Dated: April 1, 2004.

David J. O'Connor,

Acting Assistant Administrator, Office of Administration and Resources Management.

GPI–04–04

Consultant Fees Under EPA Assistance Agreements

1. *Purpose:* This policy clarifies the Environmental Protection Agency's (EPA) interpretation of the statutory and regulatory provisions regarding EPA's participation in the amounts recipients pay to consultants under EPA assistance agreements. The policy also shows how EPA calculates and applies the daily and hourly rates.

2. *Background:* EPA's appropriation act limits the Agency's participation in the amounts recipients pay to consultants to the maximum daily rate of pay for Level IV of the Executive Schedule. This limit was first established in EPA's 1978 appropriation act and is made applicable to EPA assistance agreements by EPA's Uniform Administrative Requirements and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (40 CFR 30.27(b)) and EPA's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 CFR 31.36(j)). In addition, EPA's regulations provide that contracts with firms for services which are awarded using the prescribed procurement requirements are not subject to the consultant fee limitations (40 CFR 30.27(b) and 31.36 (j)). Recently, questions have been posed regarding how to interpret the EPA regulations implementing the statutory consultant fee limitation. The purpose of this document is to provide EPA staff with information regarding EPA's interpretation of the appropriation act language as well as the regulatory provisions.

3. *Definitions:*

Consultant—For the purposes of this policy, a consultant is an individual with specialized skills who, although not on the recipient's payroll as an employee, provides personal services to the recipient under an agreement which essentially establishes an employer-employee relationship between the recipient and the individual providing the services. Consultants are typically individuals who are experts with excellent qualifications and are usually regarded as authorities or practitioners of unusual competence and skill by other individuals engaged in the same profession. An employer-employee relationship may be found to exist when the recipient selects the individual based on expertise in a particular field, directs the individual's work, and exercises day-to-day control of the individual's activities.

Consultant fee cap—The daily or hourly salary of Federal employees at Level IV of the Executive Schedule. EPA will not participate in any amount greater than that rate; recipients may, however, pay more. The 2004 annual salary for Level IV of the Executive Schedule is $136,900 per year. The current maximum daily rate (the consultant fee cap) of $524.72 is computed as follows: $136,900/2087 hours per year = $65.59 per hour x 8 hours per day = $524.72 per day. If a consultant works less than 8 hours in a day, the hourly consultant fee cap is $65.59 per hour.

4. *Authority:* The consultant fee cap first appeared in Section 409 of the Fiscal Year (FY) 1978 Appropriations Act for the Department of Housing and Urban Development and Independent Agencies, including EPA (Pub. L. 95–119). It limited the amount EPA could participate in to the rate paid to a Federal employee at the GS–18 level. The consultant fee cap in Section 408 of the FY 2002 Departments of Veterans Affairs, and Housing and Urban Development and Independent Agencies Appropriation Act, (Pub. L. 107–272), which covers EPA, is identical to that contained in the FY 1978 appropriations act except that the limit is based on the daily rate for a Federal employee at the ES–IV level.

EPA implemented the consultant fee cap in its regulations at 40 CFR 30.27(b) for grants made to non-profit organizations and universities, and at 40 CFR 31.36.(j)(2) for grants to States, local governments, and Indian Tribes.

5. *Policy:* It is EPA policy, consistent with the relevant appropriation acts and regulations, to limit EPA's participation in the amounts recipients pay to consultants to the consultant fee cap ($524.72 per day and $65.59 per hour in 2004). Recipients may pay more than the consultant fee cap, but EPA will not participate in any amount over the maximum. The consultant fee cap also applies to consultants hired by a recipient's contractors.

If the recipient, or its contractor, chooses to pay more than the consultant fee cap, the recipient must use its own funds to pay the difference. (If the assistance agreement includes a recipient indirect cost rate, the recipient can apply it only to allowable costs, not to amounts in excess of the consultant fee cap). Further, recipients cannot use the amount in excess of the consultant fee cap for cost sharing purposes. The consultant fee cap does not apply to reasonable consultant overhead or travel direct costs. Recipients may reimburse these costs in accordance with their normal practices.

The consultant fee cap does not apply to contracts awarded to firms or individuals that are awarded under the procurement procedures under 40 CFR Parts 30 and 31 (40 CFR § 30.27(b) and 40 CFR § 31.36(j)(2)) so long as the terms of the contract do not provide the recipient with responsibility for the selection, direction, and control of the individual(s) who will be providing services under the contract. Conversely, the consultant fee cap does apply to contracts awarded to firms or individuals that are awarded under the procurement procedures of 40 CFR Parts 30 and 31 if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. The cap does not apply to fixed priced or lump sum contracts for specified products such as reports or delivery of a training course.

For example, a contract with a multi-person firm that does not require the firm to provide to the recipient the services of a particular individual, and that does not require the recipient to exercise control and direction over the individual, would not be subject to the cap. On the other hand, the consultant fee cap would apply to a contract awarded to a firm with one or more persons that is justified on the basis of the qualifications of a designated individual with specialized skills if the terms of the contract require the firm to provide the recipient with the services of that individual at an hourly or daily rate of compensation and the recipient will exercise direction and control over that individual in the performance of the contract. Questions regarding whether a particular individual under a contract may be performing as a consultant and thus be subject to the consultant fee cap should be directed to the Office of General Counsel or Office of Regional Counsel, as appropriate.

In addition, the consultant fee cap does not apply to contracts for technical advisory services awarded competitively under EPA's Superfund Technical Assistance Grant (TAG) program regulations at 40 CFR 35.4205

provided that the terms of the contract indicate that the technical advisor has the discretion of an independent contractor and do not vest the TAG recipient with responsibility for the direction and control of the technical advisor.

6. *Roles and Responsibilities:* Program Offices. Project officers should alert Grants Management Offices (GMOs) if they find indications that a recipient is using consultants, *e.g.*, statements in workplans or findings as a result of post award monitoring activities. GMOs Grant Specialists must review applications for indications that a recipient may use consultants. If the application or other information, including the budget, indicates the recipient will use funds for contracts or consultants, the Grants Specialist must include the "Consultant Fee'' Term and Condition in the award document. Also, as required by the protocols for both On-Site and Desk Reviews, Grant Specialists must verify that consultant fees do not exceed the consultant fee cap. GMOs should, in cases where it is determined in accordance with Section 5 of this Order, that a recipient may be obtaining consultant services under a contract, refer the cases to the Office of Regional or General Counsel for consideration.

7. *Award Term and Condition:* The current Integrated Grants Management System Consultant Fee Term and Condition is shown below:

Award condition	
Short title	A28 Individual consultants
Type	Administrative
Payment to consultants. EPA participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2004, the limit is $524.72 per day and $65.59 per hour. The rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.	
Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j)(2) or 30.27(b), as applicable.	

EPA updates this term and condition annually based on changes in Level IV of the Executive Schedule maximum pay.

8. *Examples:*

A. If a consultant bills the recipient for 3 days of service at $2,000.00/day, EPA will limit its participation to the consultant fee cap which would be 3 × $524.72 = $1,574.16, provided the consultant works 8 or more hours each day. If the recipient pays the consultant more than $1,574.16, the additional amount is not EPA allowable and cannot be used for cost sharing.

B. If a consultant works 3 hours in a day, EPA will allow only 3 × $65.59 or $196.77. If the recipient pays the consultant more than $196.77, the additional amount is not EPA allowable and cannot be used for cost sharing.

C. If a consultant works more than 8 hours in a given day and, as a result, the recipient must pay the consultant more than the daily consultant fee cap, EPA will limit its participation to $524.72 (NOT, for example, 10 × $65.59 or $655.90). If the recipient pays the consultant more than $524.72, the additional amount is not EPA allowable and cannot be used for cost sharing.

9. *Waivers:* This policy makes clear that, if a consultant works less than 8 hours in a day, the maximum amount allowable would be the number of hours worked times the maximum hourly rate. In the past, recipients may have believed that EPA would participate in the maximum daily rate even if a consultant worked less than 8 hours in a day. In such cases, recipients and Grants Management Offices should document the facts of the situation and may request a waiver of the hourly limit from the Director, Grants Administration Division.

10. *Anticipated Outcomes/Results:* EPA's Regions and Headquarters offices will apply the consultant fee cap consistently.

11. *Sunset/Review Date:* The Grants Administration Division will review this policy annually to determine if adjustments are needed because of changes in the daily and hourly salary of Federal employees at the ES–IV level. Adjustments will be reflected in revisions to the consultant fee assistance agreement term and condition.

12. *Supercedes/Cancels:* This Grants Policy Issuance (GPI) revises and rescinds GPI 03–02 to further clarify EPA's policy with respect to the consultant fee cap.

[FR Doc. 04–7867 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011642–008.

Title: East Coast United States/East Coast of South America Vessel Sharing Agreement.

Parties: A.P. Moller-Maersk A/S; N.V.; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Mercosul Line Navegacao e Logistica Ltda.; Alianca Navegacao e Logistica Ltda.; and Hamburg-Sud.

Synopsis: The modification removes Safmarine Container Lines, Compania Sud Americana de Vapores, and Companhia Libra de Navegacao as participants in the agreement. It also revises the remaining parties' space allocations and vessel contributions as a result to the foregoing withdrawals. The parties request expedited review.

Agreement No.: 011874.

Title: K-Line/Zim Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. and Zim Israel Navigation Company Ltd.

Synopsis: The proposed agreement is a vessel-sharing agreement between the parties in the trade between ports in Oregon and Washington and the port of Vancouver, Canada, on the one hand, and ports in China, Japan, Korea, Singapore, Sri Lanka, Israel, Croatia,