

Subtitle B—Regulations
Relating to Commerce and
Foreign Trade

CHAPTER I—BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE

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AUTHORITY: 5 U.S.C. 301; 13 U.S.C. 301-307; 19 U.S.C. 3901-3913; Reorganization Plan 5 of 1950 (3 CFR 1949-1953 Comp., 1004); Executive Order 13312, Implementing the Clean Diamond Act, 68 FR 45151 (31 CFR Part 592); and Department of Commerce Organization Order No. 35-2A, July 22, 1987, as amended, and No. 35-2B, December 20, 1996, as amended.

SOURCE: 41 FR 9134, Mar. 3, 1976, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 30 appear at 68 FR 42538, July 17, 2003.

NOTE: The term "CBP Director" or "District Director of CBP" as used in this part 30 means the Regional Commissioner of CBP if the transaction is at the port of New York City; the district director of customs if at the headquarters port of a customs district other than New York City; and the customs officer in charge of the port if at a nonheadquarters port.

Subpart A—General Requirements—U.S. Principal Party in Interest (USPPI)

§ 30.1 General statement of requirement for Shipper's Export Declarations.

(a) Shipper's Export Declarations shall be filed by U.S. principal party in interest or the authorized agent in accordance with the definitions, speci-

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fications, and requirements of these regulations for all commodities, gold and silver, except as specifically exempted herein, shipped as follows:

(1) To foreign countries or areas, including Foreign Trade Zones located therein, (see § 30.58 for exemptions for shipments from the United States to Canada) from any of the following:

- (i) The United States, including the 50 States and the District of Columbia.
- (ii) Puerto Rico.
- (iii) Foreign Trade Zones in the United States or Puerto Rico.
- (iv) The Virgin Islands of the United States.

(2) Between nonforeign areas as specified below then:¹

- (i) To Puerto Rico from the United States.
- (ii) To the United States from Puerto Rico.
- (iii) To the Virgin Islands of the United States from the United States or Puerto Rico.

(b) SEDs shall be filed for merchandise moving as described above regardless of the method of transportation. Instructions for the filing of SEDs for vessels, aircraft, railway cars, etc., when sold foreign appear in § 30.33. Export information that is required to be filed for items identified on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) (15 CFR Supplement No. 1 to part 774) or the State Department's U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR, part 121) is to be filed electronically through AES. This requirement to file information via AES applies to those items that would otherwise require the filing of an SED. Exemptions from these requirements and exceptions to some of the provisions of these regulations for particular types of transactions are found in subparts C and D of this part.

(c) In lieu of filing paper SEDs as provided elsewhere in this section, when an SED would be required, the USPPI

¹Shipper's Export Declarations are not required for shipments from the United States or Puerto Rico to the United States Possessions, except to the Virgin Islands of the United States, or from a U.S. Possession destined to the United States, Puerto Rico, or another U.S. Possession.

or the authorized agent is required to file shipper's export information electronically through the AES for the export of items identified on the CCL of the EAR (15 CFR Supp. No. 1 to part 774) or the USML of the ITAR (22 CFR part 121) as provided for in subpart E of this part, Electronic Filing Requirements—Shipper's Export Information. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the AES filing requirement by the State Department. For USML shipments, refer to the ITAR (22 CFR parts 120–130) for requirements concerning the AES proof of filing citation and filing time requirements. USPPIs or their authorized agents are required to file export information through the AES for shipments of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31 and exported (reexported) in accordance with the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) as provided for in subpart E of this part. Use of the SED form is not permitted for reporting exports of rough diamonds. Entities serving as data entry and other forms of processing centers are not authorized to either collect or file export information on shipments of rough diamonds using any export reporting option. The USPPI or the authorized agent filing SEDs for the export of items not on the CCL, the USML, or exported (reexported) under the provisions of the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) has the option of filing this information electronically as provided for in subpart E of this part.

(d) *Electronic transmissions and intangible transfers.* Electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software, technical data, and technology, are not subject to this part, but may be subject to export control requirements under other

laws and regulations. See 15 CFR parts 730 through 774 of the EAR.

[41 FR 9134, Mar. 3, 1976, as amended at 41 FR 29374, July 16, 1976; 41 FR 42645, Sept. 28, 1976; 50 FR 13017, Apr. 2, 1985; 55 FR 49615, Nov. 30, 1990; 64 FR 40976, July 28, 1999; 65 FR 42561, July 10, 2000; 68 FR 42538, July 17, 2003; 68 FR 59878, Oct. 20, 2003]

§ 30.2 Related export control requirements.

(a) Under the provisions of the Export Administration Regulations of the Office of Export Administration in the International Trade Administration, U.S. Department of Commerce (15 CFR Parts 368–399),² Shipper's Export Declarations are also required for shipments of Merchandise from U.S. Possessions to foreign countries or areas. In these regulations, the term U.S. Possessions includes the Virgin Islands of the United States, Guam Island, American Samoa, Wake Island, Midway Island, and Canton and Enderbury Islands.

(b) For all shipments to foreign countries or areas, the Shipper's Export Declaration is an export control document. In preparing and filing export declarations for shipments to foreign countries and areas, therefore, the shipper must comply with all pertinent export control regulations as well as the requirements of the statistical regulations of this part. For convenience, a few provisions of the Export Administration Regulations and of the CBP regulations closely related to statistical requirements have been incorporated in these regulations. Information concerning export control regulations and information concerning agencies other than the Department of Commerce exercising export control authority for particular types of commodities may be obtained from the Office of Export Administration, International Trade Administration, Washington, D.C. 20230, or from Department of Commerce District Offices.

²See also the Export Administration Regulations of the Office of Export Administration, which may be purchased from the Government Printing Office or Department of Commerce District Offices.

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(c) Export shipments to all foreign destinations, including those filed electronically through the AES, are subject to export control regulations. This applies to mandatory, as well as voluntary AES filing. Executive Order 13312, signed July 29, 2003, implements the Clean Diamond Trade Act, which authorizes the President to implement the Kimberley Process Certification scheme in the United States. The Kimberley Process was developed to stem the worldwide movement of rough diamond exports linked to the finance of armed conflicts in certain world areas ("conflict" diamonds), specifically in some Southern African countries. The Kimberley Process Certificate serves as the mechanism to verify the absence of "conflict" diamonds from diamonds exported (reexported) from the United States.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, August 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 7213, Feb. 18, 1982; 68 FR 59878, Oct. 20, 2003]

§ 30.3 Shipper's Export Declaration forms.

(a) Official forms, or privately printed forms conforming in every respect to the official forms, shall be used in complying with requirements for Shipper's Export Declarations as follows:

(1) Except for shipments for which the Shipper's Export Declaration for In transit Goods (Commerce Form 7513) is required as specified below, the Shipper's Export Declaration shall be prepared on Commerce Form 7525-V or on Commerce Form 7525-V-Alternate (Intermodal). The arrangement of Form 7525-V-Alternate (Intermodal) conforms to and is designed for simultaneous preparation with various other shipping documents commonly used, such as the dock receipt, short form bill of lading, etc. Form 7525-V-Alternate (Intermodal) is acceptable in lieu of Form 7525-V without limitation.

(2) For merchandise shipped in transit through the United States, Puerto Rico, or the Virgin Islands of the United States from one foreign country or area to another, including such merchandise destined from one foreign place to another and transshipped in ports of the United States, Puerto

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Rico, or the Virgin Islands of the United States, and for foreign merchandise exported from General Order Warehouses, the Shipper's Export Declaration for Intransit Goods (Commerce Form 7513) shall be filed. Form 7513 shall also be filed for merchandise subject to government inspection, examination, or permit arriving from a foreign country which is rejected and exported. (Although Form 7513 provides that it is to be used for foreign merchandise, it should be used also for U.S. merchandise which after having been exported has been returned to or through the United States and is again being exported under any of the conditions described in this paragraph. Except for rejected merchandise, Form 7513 is not to be used for the reexportation of goods for which entry has been made on CBP Forms 7501 or 7502.)

(b) The Shipper's Export Declaration and the Continuation Sheet³ to the Shipper's Export Declaration (both forms designated Commerce Form 7525-V), and the Shipper's Export Declaration for In-transit Goods (Commerce Form 7513) may be purchased for a nominal price from CBP Directors, Department of Commerce District Offices, and the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or they may be privately printed. Supplies of the Alternate Intermodal Shipper's Export Declaration and the Continuation Sheet to the Alternate Intermodal Shipper's Export Declaration are not available from Government sales offices but must be privately printed. Sample official Alternate Intermodal Forms and their Continuation Sheets may be obtained from the Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233. Privately printed Shipper's Export Declaration forms must conform strictly to the respective official form in size, wording, color, quality (weight of paper stock), and arrangement, including the Office of Management and Budget approval number printed in the upper-right hand corner of the face of form. The quality (weight) of paper stock used in printing the Shipper's Export Declaration form is not less

³See § 30.10 for instructions as to use of the continuations Sheet.

than 16 nor more than 20 pounds commercial substance. Occasional shippers may obtain copies of Shipper's Export Declarations free of charge from local CBP Directors, Post Offices, and Department of Commerce District Offices.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, August 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 29829, July 9, 1982; 50 FR 23402, June 4, 1985]

§ 30.4 Preparation and signature of Shipper's Export Declaration (SED).

(a) *General requirements (SED).* For purposes of this part, all references to preparing and filing the paper SED also pertain to preparing and filing the AES electronic record. The SED or AES record is a dual purpose document used by the Census Bureau for statistical reporting purposes only, and by the Bureau of Industry and Security (BIS) and other government agencies for export control purposes. For purposes of this part, the provisions apply only to statistical reporting requirements. The Shipper's Export Declaration (SED) or the AES record must be prepared and signed by a principal party in interest or by a forwarding or other agent authorized by a principal party in interest. The person who signs the SED must be in the United States at the time of signing. That person, whether exporter (U.S. principal party in interest) or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others. The Census Bureau recognizes "routed export transactions" as a subset of export transactions. A routed export transaction is where the foreign principal party in interest authorizes a U.S. forwarding or other agent to facilitate export of items from the United States. See paragraph (c) of this section for responsibilities of parties in a routed export transaction.

(1) *Exporter (U.S. principal party in interest).* For purposes of completing the paper SED or AES record in all export transactions, the exporter (U.S. principal party in interest) is listed as the "U.S. principal party in interest" on the SED or AES record. In all export

transactions, the person listed in the U.S. principal party in interest block on the paper SED or in the U.S. principal party in interest field of the AES record is the exporter (U.S. principal party in interest) in the transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit, monetary or otherwise, of the transaction. Generally that person is the U.S. seller, manufacturer, order party, or foreign entity. The foreign entity must be listed as the U.S. principal party in interest on the SED or AES record, if it is *in the United States* when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§ 30.4 and 30.7 pertaining to the U.S. principal party in interest. In most cases, the forwarding or other agent is not a principal party in interest.

(i) If a U.S. manufacturer sells merchandise directly for export to a foreign principal party in interest, the U.S. manufacturer must be listed as the U.S. principal party in interest on the SED or AES record.

(ii) If a U.S. manufacturer sells merchandise, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the merchandise for export to a foreign principal party in interest, the U.S. buyer (wholesaler/distributor) must be listed as the U.S. principal party in interest on the SED or AES record.

(iii) If a U.S. order party directly arranges for the sale and export of merchandise to a foreign buyer, the U.S. order party must be listed as the U.S. principal party in interest on the SED or AES record. The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign principal party in interest and who, as a result of these negotiations, received the order from the foreign principal party in interest.

(iv) If a foreign entity is *in the United States* when the items are purchased or obtained for export, it is the exporter (U.S. principal party in interest) and must be listed as the U.S. principal party in interest on the SED or AES record (see § 30.4(a)(1)).

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NOTE TO PARAGRAPH (a)(1): The EAR defines the “exporter” as the person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States (see 15 CFR Part 772 of the EAR). For statistical purposes the Foreign Trade Statistics Regulations (FTSR) have a different definition of “exporter” from the Export Administration Regulations (EAR). Under the FTSR the “exporter” will always be the U.S. principal party in interest. For purposes of licensing responsibility under the EAR, the U.S. agent of the foreign principal party in interest may be the “exporter” or applicant on the license, in certain routed export transactions (see 15 CFR 758.3 of the EAR).

(2) *Forwarding or other agent.* The forwarding or other agent is that person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of items from the United States. The forwarding or other agent must be authorized by the exporter (U.S. principal party in interest) or, in the case of a routed export transaction, the foreign principal party in interest to prepare and file the SED or the AES record. In a routed export transaction, the forwarding or other agent can be the exporter for export control purposes under the EAR. However, the forwarding or other agent is never the “U.S. principal party in interest” in the U.S. principal party in interest block on the paper SED or in the “U.S. principal party in interest” field of the AES record unless the forwarding or other agent acts as an “order party.” (See paragraph (a)(1)(iii) for definition of order party)

(3) *Principal parties in interest.* Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, a forwarding or other agent is not a principal party in interest.

(b) *Responsibilities of parties in export transactions—(1) Exporter (U.S. principal party in interest) responsibilities.* (i) The exporter (U.S. principal party in interest) can prepare and file the SED or AES record itself, or it can authorize a forwarding or other agent to prepare and file the SED or AES record on its behalf. If the exporter (U.S. principal party in interest) prepares the SED or

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AES record itself, the exporter (U.S. principal party in interest) is responsible for the accuracy of all the export information reported on the SED or AES record, for signing the paper SED, filing the paper SED with U.S. CBP, or transmitting the AES record to U.S. CBP.

(ii) When the exporter (U.S. principal party in interest) authorizes a forwarding or other agent to complete the SED or AES record on its behalf, the exporter (U.S. principal party in interest) is responsible for:

(A) Providing the forwarding or other agent with the export information necessary to complete the SED or AES record;

(B) Providing the forwarding or other agent with a power of attorney or written authorization to complete the SED or AES record, or signing the authorization block printed on the paper SED (block 23 on Commerce Form 7525-V and block 29 on Commerce Form 7525-V-ALT); and

(C) Maintaining documentation to support the information provided to the forwarding or other agent for completion of the SED or AES record, as specified in §30.11.

(2) *Forwarding or other agent responsibilities.* The forwarding or other agent, when authorized by an exporter (U.S. principal party in interest) to prepare and sign the SED or prepare and file the AES record in an export transaction, is responsible for:

(i) Accurately preparing the SED or AES record based on information received from the exporter (U.S. principal party in interest) and other parties involved in the transaction;

(ii) Obtaining a power of attorney or written authorization to complete the SED or AES record, or obtaining a paper SED with a signed authorization from the exporter (U.S. principal party in interest);

(iii) Maintaining documentation to support the information reported on the SED or AES record, as specified in §30.11; and

(iv) Upon request, providing the exporter (U.S. principal party in interest) with a copy of the export information filed in the form of a completed SED, an electronic facsimile, or in any other

manner prescribed by the exporter (U.S. principal party in interest).

(c) *Responsibilities of parties in a routed export transaction*—(1) *Exporter (U.S. principal party in interest) responsibilities.* In a routed export transaction where the foreign principal party in interest authorizes a U.S. forwarding or other agent to prepare and file the SED or AES record, the exporter (U.S. principal party in interest) must maintain documentation to support the information provided to the forwarding or other agent for preparing the SED or AES record as specified in §30.11 and provide such forwarding or other agent with the following information to assist in preparing the SED or AES record:

- (i) Name and address of the U.S. principal party in interest;
- (ii) U.S. principal party in interest's, IRS, EIN;
- (iii) Point of origin (State or FTZ);
- (iv) Schedule B description of commodities;
- (v) Domestic (D), foreign (F), or FMS (M) code;
- (vi) Schedule B Number;
- (vii) Quantity/unit of measure;
- (viii) Value;
- (ix) Upon request from the foreign principal party in interest or its agent, the Export Control Classification Number (ECCN) or sufficient technical information to determine the ECCN; and
- (x) Any information that it knows will affect the determination of license authority.

NOTE TO PARAGRAPH (c)(1): For items in paragraph (c)(1)(ix) and (x) of this section, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

(2) *Forwarding or other agent responsibilities.* In a routed export transaction, the forwarding or other agent is responsible for; obtaining a power of attorney or written authorization from the foreign principal party in interest to prepare and file the SED or AES record on its behalf; preparing, signing, and filing the SED or AES record based on information obtained from the exporter (U.S. principal party in interest) or other parties involved in the trans-

action; maintaining documentation to support the information reported on the SED or AES record, and upon request by the exporter (U.S. principal party in interest), provide appropriate documentation to the exporter (U.S. principal party in interest) verifying that the information provided by the exporter (U.S. principal party in interest) was accurately reported on the SED or AES record. The forwarding or other agent must also provide the following export information on the SED or AES record:

- (i) Date of exportation;
- (ii) Bill of lading/airway bill number;
- (iii) Ultimate consignee;
- (iv) Intermediate consignee;
- (v) Forwarding or other agent name and address;
- (vi) Country of ultimate destination;
- (vii) Loading pier;
- (viii) Method of transportation;
- (ix) Exporting carrier;
- (x) Port of export;
- (xi) Port of unloading;
- (xii) Containerized;
- (xiii) Weight;
- (xiv) ECCN;
- (xv) License Authority;
- (xvi) Signature in the certification block on the paper SED (block 24 on Commerce Form 7525-V and block 36 on Commerce Form 7525-V-ALT). In a routed export transaction the exporter (U.S. principal party in interest) must be listed as U.S. principal party in interest on the SED or on the AES record;

NOTE TO PARAGRAPH (c)(2): For items in paragraph (c)(2)(xiv) and (xv) of this section, where the foreign principal party in interest has assumed responsibility for determining and obtaining license authority, the EAR sets forth the information sharing requirements that apply at 15 CFR 758.3(c) of the EAR.

(d) *Information on the Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The data provided on the SED or AES electronic record shall be complete, correct, and based on personal knowledge of the facts stated or on information furnished by the parties involved in the export transaction. All parties involved in export transactions, including U.S. forwarding or other agents, should be

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aware that invoices and other commercial documents may not necessarily contain all the information needed to prepare the SED or AES record. The parties must ensure that all the information needed for completing the SED or AES record, including correct export licensing information, is provided to the forwarding or other agent for the purpose of correctly preparing the SED or AES record as stated in this section.

(e) *Authorizing a Forwarding or other agent.* In a power of attorney or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal (see 15 CFR 758.1(h) of the EAR). In cases where a forwarding or other agent is filing export information on the SED or AES record, the forwarding or other agent must obtain a power of attorney or written authorization from a principal party in interest to file the information on its behalf. A power of attorney or written authorization should specify the responsibilities of the parties with particularity, and should state that the forwarding or other agent has authority to act on behalf of a principal party in interest as its true and lawful agent for purposes of the export transaction in accordance with the laws and regulations of the United States.

(f) *Format requirements for SEDs:* The SED shall be prepared in English and shall be typewritten or prepared in ink or other permanent medium (except indelible pencil). The use of duplicating processes, as well as the overprinting of selected items of information, is acceptable.

(g) *Copies of SEDs:* All copies of the SEDs must contain all of the information called for in the signature space as to name of firm, address, name of signer, and capacity of signer. The original SED must be signed in ink, but signature on other copies is not required. The use of signature stamps is acceptable. A signed legible carbon or other copy of the export declaration is acceptable as an "original" of the SED.

[65 FR 42561, July 10, 2000]

§ 30.5 Number of copies of Shipper's Export Declaration required.

(a) Except as provided elsewhere in these regulations the Shipper's Export

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Declaration shall be delivered to the carrier or postmasters, as specified in §§ 30.12 and 30.15, in the following number of copies:

(1) In duplicate for shipments, except by mail, destined to all foreign countries except Canada.

(2) One copy only for shipments to Canada (see § 30.58 for exemption for shipments from the United States to Canada) and nonforeign areas.

(3) One copy only for mail shipments to all destinations.

(b) In addition to the standard requirements set forth in paragraph (a) of this section, additional copies of Shipper's Export Declarations may be required for export control purposes by the regulations of the Office of Export Administration or other Government agencies or in particular circumstances by the CBP Director or by the postmaster.

[41 FR 9134, Mar. 3, 1976, as amended at 55 FR 49615, Nov. 30, 1990]

§ 30.6 Requirements as to separate Shipper's Export Declarations.

Except as specifically provided in subpart C, a separate Shipper's Export Declaration (in the required number of copies—see § 30.5) is required for each shipment (consisting of one or more kinds of merchandise) from one consignor to one consignee on a single carrier. In addition, more than one declaration is required for an individual shipment as follows:

(a) For consignments by rail, truck, or other vehicle, requiring more than one rail car, truck, or other vehicle, a separate export declaration is required for the merchandise carried in each such rail car, truck, or other vehicle. However, CBP Directors are authorized to waive this requirement where multiple car shipments are made under a single bill of lading or other loading document and are cleared simultaneously.

(b) [Reserved]

[41 FR 9134, Mar. 3, 1976, as amended at 55 FR 47049, Nov. 9, 1990]

§ 30.7 Information required on Shipper's Export Declarations.

The following information shall be furnished in the appropriate spaces

provided on the paper copy of the Shipper's Export Declaration and shall conform to the requirements set forth in this section. (See §30.92 for information as to the statistical classification Schedules C and D referred to in this section. Also, see §30.8 for information required on Form 7513 in addition to these requirements.) For information required to be filed electronically see §30.63.

(a) *Port of export.* The name of the U.S. CBP port of exportation shall be entered in terms of Schedule D, *Classification of CBP Districts and Ports*. (See §30.20(c) for definition of port of exportation.) For shipments by mail, the name of the Post Office where the package is mailed shall be inserted in the space for U.S. port of export.

(b) *Method of transportation.* Except on Commerce Form 7513, the method of transportation by which the goods are exported (or shipped to a nonforeign area where the declaration covers such a shipment) *i.e.*, vessel (including ferry), air, or other, shall be indicated by check mark in the appropriate space. For shipments by means of transportation other than vessel or air the specific method of transportation (rail, truck, pipeline, etc.) used should be entered. "Other" should be checked for exported aircraft being flown away, vessels exported under their own power or afloat, or for other vehicles exported other than aboard another carrier, and the manner in which exported should be specified; *e.g.*, "flown away," "in tow," etc.

(c) *Exporting carrier.* Information concerning the specific exporting carrier shall be reported as follows:

(1) For shipments by vessel, the name and flag nationality of the ship and the number or name of the pier at which the goods were laden shall be shown.

(2) For shipments by air, the name of the airline shall be reported.

(3) For shipments by other than vessel or air, the carrier shall be identified by name and number or other available designation.

In all cases, the information shall be furnished as to the carrier which transports the merchandise to a foreign country or to an ultimate destination in a nonforeign area, and not as to a different carrier which may have trans-

ported the goods to the seaport, airport, or border port of export for final shipment.

(d) *Name of the U.S. principal party in interest and U.S. principal party in interest's Employer Identification Number (EIN).* For purposes of completing the paper SED or AES record the exporter (U.S. principal party in interest) is the U.S. principal party in interest. The name and address (number, street, city, state, ZIP Code) of the U.S. principal party in interest and the U.S. principal party in interest's EIN shall be entered where requested on the SED or AES electronic record. The EIN shall be the U.S. principal party in interest's own and not another's EIN.

(1) *Name of the U.S. principal party in interest.* In all export transactions, the person listed in the U.S. principal party in interest block on the SED or in the U.S. principal party in interest field on the AES record must be the exporter (U.S. principal party in interest) in the transaction. The U.S. principal party in interest is the person in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. Generally that person is the U.S. seller, manufacturer, order party, or foreign entity, if in the United States when the items are purchased or obtained for export. The foreign entity must then follow the provisions for preparing and filing the SED or AES record specified in §§30.4 and 30.7 pertaining to the U.S. principal party in interest. (See §30.4 for details on the specific reporting responsibilities of exporter (U.S. principal party in interest)).

(2) *U.S. principal party in interest's Employer Identification Number (EIN).* An exporter (U.S. principal party in interest) shall report its own Internal Revenue Service (IRS) EIN in the U.S. principal party in interest's (IRS) EIN block/field on the SED. If, and only if, no IRS EIN has been assigned to the exporter (U.S. principal party in interest), the exporter's (U.S. principal party in interest) own SSN, preceded by the symbol "SS," must be reported on the paper SED. On the AES record the appropriate SSN symbol must be reported. When a foreign entity is in the United States when the items are purchased or obtained for export it is

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the exporter (U.S. principal party in interest). In such situations, when the foreign entity does not have an EIN or SSN, a border crossing number, passport number, or any number assigned by U.S. CBP must be reported on the SED or the AES record. On the paper SED, the appropriate number should be preceded by the symbol "T." On the AES record, the appropriate AES identifier code as specified in the Automated Export System Trade Interface Requirements (AESTIR) must be reported. Use of another's EIN or SSN is prohibited.

(3) Address (number, street, city, state, Zip Code) of the USPPI. In all export transactions, the USPPI shall report the address location from which the merchandise actually starts its journey to the port of export. For example, an SED covering merchandise laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show the address of the warehouse in Georgia. If the USPPI does not have a facility (processing plant, warehouse, distribution center, or retail outlet, etc.) at the location from which the goods began their export journey, report the USPPI address from which the export was directed. For shipments of multiple origins reported on a single SED, report the address from which the greatest value begins its export journey or, if such information is not known at the time of export, the address from which the export is directed.

(e) *Forwarding or other agent.* The name, address, and EIN or Social Security Number (SSN) of the duly authorized forwarding or other agent (if any) of a principal party in interest must be recorded where required on the SED or AES record. (See §30.4 for details on the specific reporting responsibilities of forwarding or other agents).

(f) *Ultimate consignee.* The name and address (place, country) of the ultimate consignee whether by sale in the United States or abroad or by consignment shall be stated on the export declaration. For exports to foreign countries, the ultimate consignee shall be the same person so designated in the validated export license or authorized to be ultimate consignee under the ap-

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plicable general license in conformity with Export Administration Regulations.

(g) *Intermediate consignee.* The name and address of the intermediate consignee (if any) shall be stated. For exports to foreign countries, the intermediate consignee shall be the person named as such in the validated export license or authorized to act as such under the applicable general license and in conformity with the Export Administration Regulations. If there is no intermediate consignee, the word "none" shall be entered on the Shipper's Export Declaration. (On Form 7513 the name and address of the intermediate consignee (if any) in a foreign country must be shown below the description of commodities across columns 1 through 6.)

(h) *Foreign port of unloading.* For shipments by vessel and by air the foreign port and country of unloading (i.e., the foreign port and country at which the merchandise will be unladen from the exporting carrier) shall be shown on the Shipper's Export Declaration in addition to the country of ultimate destination. The reporting of "optional" ports of unloading is not permissible except as provided in the Export Administration Regulations.⁴ Where optional ports of unloading are named on the Shipper's Export Declaration under the permissible conditions, a photocopy, carbon, or other legible copy of the originally filed Shipper's Export Declaration indicating the actual port of unloading shall be filed by the exporter or his agent with the CBP Director as soon as the actual port of unloading is known to the exporter. (See §30.16 of these regulations.) Information as to port of unloading is required for shipments by vessel and air only.

(i) *Country of destination.* Country of destination shall be reported on the Shipper's Export Declaration in terms of the names designated in Schedule C-E, *Classification of Country and Territory Designations for U.S. Export Statistics*, as follows:

(1) For shipments under validated export licenses, the country of ultimate

⁴See Export Administration Regulations. (See footnote 2 to §30.2)

destination shown on the export declaration shall conform to the country of ultimate destination as shown on the license.

(2) For shipments not moving under validated export license, the country of ultimate destination as known to the exporter at the time of exportation shall be shown on the export declaration. "Country of ultimate destination" means the country in which the goods are to be consumed or further processed or manufactured. The country to which the goods are being shipped is not the country of ultimate destination for purposes of preparing the Shipper's Export Declaration if the exporter has knowledge at the time the goods leave the United States that they are intended for reexport or transshipment in their present form to another known country. For goods shipped to Canada, Panama, Hong Kong, Belgium or The Netherlands for example, special care should be exercised before reporting these countries as the ultimate destination, since these are countries through which merchandise from the United States is frequently transshipped. If the shipper does not know the ultimate destination of the goods, the country of destination to be shown on the export declaration is the last country, as known to the exporter at the time of shipment from the United States, to which the goods are to be shipped in their present form. (For instructions as to the reporting of country of destination for vessels sold or transferred from the United States to foreign ownership, see §30.33.)

(j) *Transportation Reference Number.* Enter the Transportation Reference Number as follows:

(1) *Vessel shipments.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported. This number is required to be reported for all vessel shipments.

(2) *Air shipments.* Report the master air waybill number for all air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the airplane for cargo being exported. The reporting of this number is optional.

(3) *Rail shipments.* Report the bill of lading (BOL) number for all rail shipments. The BOL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported. The reporting of this number is optional.

(4) *Truck shipments.* Report the Freight or Pro Bill number for all truck shipments. The Freight or Pro Bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The Freight or Pro Bill number correlates to a bill of lading number, air waybill number or Trip number for multi-modal shipments. The reporting of this number is optional.

(k) [Reserved]

(1) *Description of commodities and Schedule B number.* The correct commodity number as provided in Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States*, shall be entered in the space provided on the Shipper's Export Declaration form, and a description of the merchandise shall be supplied in the "Description of Commodities" column in sufficient detail to permit the verification of the Schedule B commodity number. The name of the commodity, in terms which can be identified or associated with the language used in Schedule B (usually the commercial name of the commodity), and any and all characteristics of the commodity which distinguish it from commodities of the same name covered by other Schedule B classifications shall be clearly and fully stated. Include marks, numbers, or other identification shown on packages and the number and kinds of packages (*i.e.*, boxes, barrels, baskets, bales, etc.). Careful reference to the Schedule B classification scheme for related commodities as well as for the commodity being shipped is necessary in order to establish which particular characteristics must be stated in the description to permit verification of the correct Schedule B commodity number and to eliminate any question that some other commodity number might apply. A description of commodities in the kind of detail specified above is a separate requirement, and the furnishing of the correct Schedule B commodity

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number does not relieve the exporter of furnishing, in addition, a complete and accurate commodity description in accordance with this requirement. If the shipment is moving under a validated license, the description shown on the export declaration shall conform with that shown on the validated export license. However, where the description on the license does not state all of the characteristics of the commodity which are needed to completely verify the commodity number, as described above, the missing characteristics, as well as the description shown on the license, shall be stated in the commodity description on the Shipper's Export Declaration.

(m) *Export license number and expiration date (or general license symbol)*. For exports to foreign countries the export license number and expiration date, or the general license symbol shall be shown below the description of the commodity.

(n) *Net quantity*. Where a unit of quantity is specified in Schedule B for the commodity number in which the item is classified, net quantity is required to be reported in the specified unit, and the unit in which reported should be indicated on the declaration following the net quantity figure. Where the unit of quantity specified in Schedule B is "No." (number), "Each" or the abbreviation "Ea." may be indicated on the declaration as the unit of quantity. If no unit of quantity is specified in Schedule B for a numbered classification, but a validated export license for the item specifies a unit of quantity, the net quantity shall be reported on the declaration in terms of the unit of quantity specified in the validated license. If neither Schedule B nor an applicable validated license specifies a unit of quantity for the item, net quantity is not required to be reported, and an "X" should be entered in the "net quantity" column on the Shipper's Export Declaration. Where Schedule B calls for two units of quantity, net quantity shall be reported in terms of both units. Where the specified unit is in terms of weight (ounces, pounds, etc.) the net quantity should reflect the net weight, exclusive of the weight of barrels, boxes, or other bulky coverings, and exclusive of salt or pick-

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le in the case of salted or pickled fish or meats. *Note, however*, That for a few commodities where "content lb.," "dry weight," or some similar weight unit is specified in Schedule B, the net quantity to be reported on the Shipper's Export Declaration may be less than the net weight. In the expression of net quantities, fractions of one-half unit or upward will be counted as a whole unit, and fractions of less than one-half unit will be ignored, except that where the total net quantity is less than one-half of the unit prescribed for the commodity in Schedule B "Less than one-half (unit)" should be reported. (For example, where the unit for a given commodity is in terms of "M board feet," a net quantity of 8,400 board feet would be reported as "8 M bd. ft." and a net quantity of 900 board feet would be reported as "1 M bd. ft."; however, a total net quantity of 450 board feet should not be ignored but should be reported as "less than one-half M bd. ft.")

(o) *Gross (shipping) weight*. Enter the gross shipping weight in kilograms on the SED or the AES record, including the weight of containers, for air, vessel, truck, and rail methods of transportation. However, for containerized cargo in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers should not be included in the gross weight of the commodities. If the gross shipping weight information is not available for individual Schedule B items because commodities covered by more than one Schedule B number are contained in the same shipping container, approximate shipping weights should be used for each Schedule B item in the container. The total estimated weights must equal the actual shipping weight of the entire container or containers and contents.

(p) *"D" (Domestic) or "F" (Foreign)*. (1) The export declaration covering exports to foreign countries shall show foreign goods separately from goods of domestic production. Exports of foreign merchandise include those commodities which are the growth, produce, or manufacture of foreign countries which entered the United States, including U.S. Foreign Trade Zones, as imports and which at the

time of exportation have undergone no change in form or condition or enhancement in value by further manufacture in the United States, including U.S. Foreign Trade Zones, Puerto Rico, or U.S. Possessions.

(2) Exports of domestic merchandise include those commodities which are the growth, produce, or manufacture of the United States, including U.S. Foreign Trade Zones, Puerto Rico, or U.S. Possessions (including commodities incorporating foreign components), and those articles of foreign origin which have been enhanced in value or changed from the form in which imported by further manufacture or processing in the United States, including U.S. Foreign Trade Zones, Puerto Rico, or U.S. Possessions.

(3) The above distinction between domestic and foreign merchandise is intended only for use in reporting on the Shipper's Export Declaration and is intended for statistical purposes only.

(4) On the Shipper's Export Declaration in the column headed "Specify 'D' or 'F'", domestic merchandise shall be identified by the designation "D" and foreign merchandise shall be identified by the designation "F." On the Shipper's Export Declaration for In-Transit Goods, Form 7513, one of the following statements, whichever is appropriate, shall be shown across the body of the form within columns 1 through 6:

(i) For in-transit shipments of domestic (U.S.) merchandise, "The merchandise described herein is of the growth, production or manufacture of the United States;" and

(ii) For in-transit shipments of foreign merchandise, "The merchandise described herein is of foreign origin."

(5) *Foreign Military Sales (FMS) indicator.* For any export that represents the delivery of goods or the repair of military equipment under provisions of the FMS program (including those financed under the Foreign Military Finance (FMF) Program), an "M" indicator code should be included in Item (16) on Commerce Form 7525-V and in Item (23) on Commerce Form 7525-V-ALT (Intermodal) of the paper SED, with an "FS" Export Information Code on the Commodity Line Item Description (CL1) field of the Automated Export System (AES) record layout, and a

"3" indicator code in field 2 (Type) of the Automated Export Reporting Program (AERP) record layout. This indicator code should be used in lieu of the domestic (D) or foreign (F) indicator code required in those fields on the SED Form, the AES record, and the AERP record. The FMS indicator code will serve to identify more accurately that segment of U.S. exports that represent FMS deliveries in the U.S. export statistics.

(q) *Value.* (1) In general, the value to be reported on the Shipper's Export Declaration or AES record shall be the value at the U.S. port of export (selling price or cost if not sold, including inland freight, insurance, and other charges to U.S. port of export) (nearest whole dollar; omit cents figures). The "Selling price" for goods exported pursuant to sale, and the value to be reported on the SED or AES record, is the exporter's (U.S. principal party in interest) price to the foreign principal party in interest, net any unconditional discounts from list price, but without deducting any discounts which are conditional upon a particular act or performance on the part of the customer. Commissions to be paid by an exporter (U.S. principal party in interest) to his agent abroad, or to be deducted from the selling price by the agent abroad should be excluded. For goods shipped on consignment without a sale actually having been made at the time of export, the "selling price" to be reported on the SED or AES record is the market value at the time of export at the United States port from which exported.

(2) The value reported on the Shippers' Export Declaration shall exclude: The cost of loading on the exporting vessel, aircraft, car or vehicle at the port of exportation; freight, insurance, and any other charges or transportation costs beyond the port of export; and any duties, taxes, or other assessments imposed by foreign countries. The value reported shall include inland or domestic freight or other charges to the seaport, airport, or border port of exportation.

(3) The value to be reported as defined above is (or is equivalent to) an f.a.s. (Free alongside ship) value. Therefore, where goods are sold f.o.b. a

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U.S. point other than the port of exportation, freight, insurance, and other costs to the border, sea, or airport of exportation shall be added to the selling price (as defined above) for purposes of reporting value on the Shipper's Export Declaration. If the actual amount of such domestic costs is not available, an estimate of the domestic costs shall be added. Where goods are sold at a "delivered" price, c.i.f. foreign destination, the cost of loading on the exporting carrier at the port of exportation, if any, and freight, insurance, and other costs beyond the port of exportation should be subtracted from the price for purposes of reporting value on the Shipper's Export Declaration. If the actual amount of such costs is not available, an estimate of the costs should be subtracted. Costs added to or subtracted from the selling price in accordance with the above instructions should not be itemized or shown separately on the Shipper's Export Declaration, but the value reported should be the value after the making of such adjustments, where they are required to arrive at "value at U.S. port of export." In the expression of values in export declarations, fractions of a dollar less than 50 cents should be ignored, and fractions of 50 cents or upward should be counted as \$1.

(4) For definitions of the value to be shown on the Shipper's Export Declaration for special types of transactions where the commodities are not being exported pursuant to commercial sales, or where subsidies, government financing or participation, or other unusual conditions are involved, see § 30.30.

(r) *Date of exportation.* Information as to date of exportation is not required to be reported for shipments by vessel or by mail. For other shipments, the date of departure (or date of clearance, if date of departure is not known) shall be shown on the Shipper's Export Declaration as the date of exportation.

(s) *Designation of agent and signature.* For information regarding the use of the space provided on Form 7525-V and 7525-V-Alternate (Intermodal) for authorization of agent, and for requirements as to signature, see § 30.4.

(t) *Point (state) of origin or Foreign Trade Zone number.* (Not required for in-transit merchandise documented on

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Form 7513.) (1) The state in which the merchandise actually begins its movement in international trade; that is, the state in which the merchandise actually starts its journey to the port of export. For example, a Shipper's Export Declaration covering merchandise laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show Georgia as the state of origin. This may not be the state where the merchandise was produced, mined, or grown, or necessarily the state where the exporter is located. The state designation to be shown shall be the U.S. Postal Service's standard two-letter state abbreviation.

(2) For shipments of multistate origin, reported on a single SED, report state of the commodity of the greatest value or, if such information is not known at the time of export, the state in which the commodities are consolidated for export.

(3) For merchandise exported from a U.S. Foreign Trade Zone, the letters "FTZ" followed by the Foreign Trade Zone number shall be reported.

(u) *Containerized.* (Not required for in-transit merchandise documented on Form 7513.) This information is required to be shown for vessel shipments only. A containerized shipment is one transported in any size van-type container such as 8'x8'x20' or 8'x8'x40'. Cargo originally booked as *containerized cargo* as well as that placed in containers at the vessel operator's option shall be included.

(v) *Parties to transaction.* (Not required for in-transit merchandise documented on Form 7513.) An export between related parties is one—

(1) From a U.S. person (U.S. exporter) to a foreign business enterprise (foreign consignee) in which at anytime during the fiscal year, the U.S. person owned or controlled, directly or indirectly, 10 percent or more of the voting securities of the foreign enterprise, if an incorporated business enterprise; or an equivalent interest, if an unincorporated business enterprise, including a branch; or

(2) From a U.S. business enterprise (U.S. exporter) to a foreign person (foreign consignee) that, at anytime during the fiscal year, owned or controlled, directly or indirectly, 10 percent or more of the voting securities of the U.S. business enterprise, if an incorporated business enterprise; or an equivalent interest if an unincorporated business enterprise, including a branch.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35-2 A, Aug. 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 42 FR 59839, Nov. 22, 1977; 43 FR 50675, Oct. 31, 1978; 43 FR 56030, Nov. 30, 1978; 44 FR 1971, Jan. 8, 1979; 45 FR 29567, May 5, 1980; 47 FR 29829, July 9, 1982; 50 FR 23402, June 4, 1985; 63 FR 41187, Aug. 3, 1998; 64 FR 40976, July 28, 1999; 65 FR 42563, July 10, 2000; 68 FR 42538, July 17, 2003]

§ 30.8 Additional information required on Shipper's Export Declaration for In-Transit Goods (Form 7513).

In addition to the information required under § 30.7, the following information shall be shown on the Shipper's Export Declaration for In-Transit Goods, Form 7513:

(a) *U.S. port of arrival.* The U.S. port at which the merchandise covered by the declaration arrived from a foreign country shall be shown.

(b) *Country from which shipped.* The name of the foreign country where the goods were loaded on the carrier which transported the merchandise to the United States from a foreign country shall be indicated.

(c) *Date of arrival.* The date on which the merchandise arrived in the United States shall be entered.

(d) *Country of origin.* The name of the country of origin as defined in § 30.70(f) shall be indicated.

§ 30.9 Requirements for separation and alignment of items on Shipper's Export Declarations.

For each Schedule B classification (see § 30.7(l)) for which merchandise is included in the shipment, a separate item shall be shown on the Shipper's Export Declaration and the separate description of commodities, shipping weight, "D" or "F" designation, Schedule B commodity number, net quantity

and value for the item shall be correctly aligned horizontally, and clearly distinguishable from information applying to other Schedule B items on the same declaration. However, where merchandise covered by a single Schedule B classification is moving under more than one general license, under more than one validated export license, or under a validated export license which shows two or more listings for the same Schedule B number, a separate item shall be shown on the Shipper's Export Declaration for each license or for each listing on the license.⁵ For merchandise moving under validated license, information required by export control regulations as to export license number and expiration date, and information as to whether the export is a partial or complete shipment against the license, shall be shown immediately below the corresponding description of commodities on the Shipper's Export Declaration. Where two or more items are classified under the same Schedule B number and moving under the same general license, or where no license is required, the quantities, values and shipping weights of such invoice items, wherever practical, should be combined and the information shown on a single horizontal line of the Shipper's Export Declaration. Commodities of U.S. manufacture incorporating foreign components shall be reported under the Schedule B number for the exported commodity, and a separate item shall not be shown for the imported components. If the exporter desires to record the imported components separately on the export declaration for purposes of identification with a temporary import bond, a notation may be made in the "Description of Commodities" column as to the imported components that have been incorporated in the exported commodity. In the preparation of the export declaration, shippers shall conform to the line spacing on all copies.

[41 FDR 9134, Mar. 3, 1976, as amended at 50 FR 23403, June 4, 1985]

⁵ See § 30.6 for prohibition against reporting general license commodities on the same Shipper's Export Declaration with commodities moving under a validated license.

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§ 30.10 Continuation sheets for Shipper's Export Declaration.

When more horizontal lines than the number provided on the Shipper's Export Declaration form are required to list all of the merchandise covered by the declaration, Continuation Sheets should be utilized.⁶ In lieu of official Continuation Sheets, additional copies of the Shipper's Export Declaration form with no portion torn off or removed, may be used as continuation sheets. All continuation sheets shall be numbered in proper sequence and securely stapled to the first sheet, which must be the export declaration itself. Each continuation sheet shall show the CBP port of exportation and the country of ultimate destination for the shipment. The following statement with the blank filled in as appropriate shall be inserted on the last line of the description column of the Shipper's Export Declaration itself:

"This declaration consists of this sheet and No. _____ continuation sheets."

[41 FDR 9134, Mar. 3, 1976, as amended at 50 FR 23403, June 4, 1985]

§ 30.11 Authority to require production of documents.

For purposes of verifying the completeness and accuracy of the information reported as required under §§ 30.7 and 30.8, and for other purposes under the regulations in this part, CBP is authorized to require the owners and operators of exporting carriers, as well as the exporters or their agents, either at the time of exportation or within a period of 3 years subsequent thereto, to produce for inspection or copying shipping documents, invoices, orders, packing lists, correspondence, as well as any other relevant documents and to furnish other information bearing upon a particular exportation. The Bureau of the Census is similarly authorized to require the production of such documents. CBP shall refuse to accept Shipper's Export Declarations containing known errors and omissions, and may require their correction, but acceptance by the CBP Director shall not be construed as evidence that all requirements have been met, and such accept-

⁶ See § 30.3(b).

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ance shall not relieve the exporter of the responsibility to furnish complete and correct information at a later time if all requirements have in fact not been properly met.

§ 30.12 Time and place for presenting the SED, exemption legends or proof of filing citations.

The following conditions govern the time and place to present paper SEDs, exemption legends, or proof of filing citations. It is the duty of the USPPPI or the authorized agent to deliver the required number of copies of the SED, the exemption legends, or the proof of filing citations when the cargo is tendered to the exporting carrier. Information on items identified on the CCL of the EAR (15 CFR Supp. No. 1 to Part 774) or the USML of the ITAR (22 CFR part 121) that would otherwise require the filing of an SED, must be filed through the AES. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the SED filing requirements by the State Department. For State Department USML shipments, refer to the ITAR (22 CFR parts 120-130) for more specific requirements concerning the AES proof of filing citation and filing time. Failure of the USPPPI or the authorized agent of either the USPPPI or foreign principal party in interest to comply with these requirements constitutes a violation of the provisions of these regulations, and renders such principal party or the authorized agent subject to the penalties provided for in § 30.95 of this part.

(a) *Postal exports.* SEDs for exports of items being sent by mail, as required in § 30.1 of this part, shall be presented to the postmaster with the packages at the time of mailing.

(b) *Pipeline exports.* SEDs for exports being sent by pipeline are not required to be presented prior to exportation; however, they are required to be filed within four (4) working days after the end of each calendar month. These SEDs must be filed with the CBP Port Director having jurisdiction for the pipeline, and the filer must deliver the SED in the number of copies specified in § 30.5 of this part to cover exports to

each consignee during the calendar month.

(c) *Exports by other methods of transportation.* For exports sent other than by mail or pipeline, the required number of copies of SEDs as prescribed in §30.5 of this part shall be delivered to the exporting carrier when the cargo is tendered to the exporting carrier.

(d) *Exports filed via AES.* For exports filed through the AES, it is the duty of the USPPI or the authorized agent to deliver to the exporting carrier, the AES exemption legends as provided for in §30.65 of this part or the AES proof of filing citation as provided for in 22 CFR (parts 120–130) of the ITAR when the cargo is tendered to the exporting carrier for transport to the foreign country.

[68 FR 42539, July 17, 2003]

§§ 30.13–30.14 [Reserved]

§ 30.15 Procedure for presentation of declarations covering shipments from an interior point.

For shipments from an interior point, the Shipper's Export Declaration in the number of copies required in §30.5 may be prepared and delivered by the exporter or his agent to the inland carrier to accompany the merchandise to the exporting carrier at the seaport, airport, or border port of exportation, or it may be otherwise delivered directly to the exporting carrier. In either case, the Shipper's Export Declaration must be in the exporting carrier's possession prior to exportation. (See §30.6 for requirements for a separate set of Shipper's Export Declarations, for each car, truck or other vehicle, covering only the merchandise exported in that car, truck, or vehicle.)

§ 30.16 Corrections to Shipper's Export Declarations.

The Exporter (U.S. principal party in interest) (or its agent) must report corrections, cancellations, or amendments to information reported on Shipper's Export Declarations to the CBP Director at the port of exportation (or, in the case of mail shipments directly to the U.S. Census Bureau, National Processing Center, Attention: Foreign Trade Section, 1201 East 10th Street, Jeffersonville, Indiana 47132) as soon as

the need to make such correction, cancellation, or amendment is determined. Such corrections, cancellations, or amendments may be made directly onto the originally filed Shipper's Export Declaration if the originally filed declarations have not already been mailed to the Bureau of the Census. If the originally filed Shipper's Export Declarations have already been mailed to the Bureau of the Census, a photocopy, carbon, or other legible copy of the originally filed Shipper's Export Declaration, on which the incorrect data are neatly lined out and the corrected data entered thereon, shall be promptly filed with the CBP Director at the port of exportation (or, in the case of mail shipments, with the Postmaster at the post office where the shipment was mailed). Such correction copies should have the words "CORRECTION COPY" conspicuously shown in the upper right portion of the form. The provisions of this paragraph relating to the reporting of corrections, amendments, or cancellations of information, shall not be construed as a relaxation of the requirements of the laws and regulations pertaining to the preparation and filing of Shipper's Export Declarations.

[42 FR 56604, Oct. 27, 1977, as amended at 65 FR 42564, July 10, 2000]

Subpart B—General Requirements—Exporting Carriers

§ 30.20 General statement of requirement for the filing of manifests and Shipper's Export Declarations by carriers.

(a) Carriers transporting merchandise from the United States, Puerto Rico, or U.S. Possessions to foreign countries; from the United States or Puerto Rico to the Virgin Islands of the United States; or between Puerto Rico and the United States; shall not be granted clearance, where clearance is required, and shall not depart, where clearance is not required, until manifests (for vessels, aircraft, and rail carriers) and Shipper's Export Declarations have been filed with the CBP Director as specified in paragraphs (b) through (d) of this section, except as provided in §30.24. Where for reasons beyond the control of the exporting

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carrier, a given declaration (or declarations) has not been received prior to exportation or departure, and the merchandise has been laden, such carrier shall not as a result of this circumstance be required to off-load the merchandise, or to delay its clearance (where clearance is required) or departure (if clearance is not required). However, the provisions of § 30.24 remain applicable.

(b) For carriers transporting merchandise from the United States to Puerto Rico, the complete manifest, as required, and all required Shipper's Export Declarations shall be filed within one business day after arrival, as defined in 19 CFR 4.2(b), with the CBP Director in Puerto Rico, except as provided in § 30.24.

(c) Except as otherwise specifically provided, declarations should not be filed at the place where the shipment originates if it is to be transshipped within the United States area before being dispatched to a foreign country or to its final destination in a nonforeign area. This applies to shipments originating in Puerto Rico or the Virgin Islands of the United States being forwarded to the United States for transshipment to another destination, and to shipments originating in the United States and being forwarded to Puerto Rico or the Virgin Islands of the United States for transshipment, as well as to merchandise being transshipped in CBP Districts within the States of the United States. In such cases, the declarations should be filed only with the CBP Director at the actual port of exportation.

(d) For purposes of these regulations, the port of exportation is defined as the CBP port at which or nearest to which the land surface carrier transporting the merchandise crosses the border of the United States into foreign territory, or, in the case of exportation by vessel or air, the CBP port where the merchandise is loaded on the vessel or aircraft which is to carry the merchandise to a foreign country or to a nonforeign area of ultimate destination.

[41 FR 9134, Mar. 3, 1976, as amended at 41 FR 42645, Sept. 28, 1976; 58 FR 41424, Aug. 4, 1993]

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§ 30.21 Requirements for the filing of manifests.

Carriers transporting merchandise via vessel, aircraft, or rail are required to file an outbound manifest (along with the required SEDs, supporting documentation and/or the exemption statement or the proof of filing citation) to the CBP Port Director at the port of exportation. Outbound vessel manifests may be filed via paper or electronically through the vessel transportation module, a component of the AES, as provided in CBP Regulations, 19 CFR, §§ 4.63 and 4.76. SEDs may be filed via paper or electronically via the AES.

(a) *Paper SED—paper manifest.* If filing paper SEDs and paper manifest, attach the copies of the SEDs to the manifest. For each item of cargo transported via vessel, the Transportation Reference Number on the SED covering the item must be shown on the manifest.

(b) *Paper SED—electronic manifest.* If filing paper SEDs and the electronic outbound vessel manifest, carriers are responsible for submitting paper SEDs directly to the CBP Port Director.

(c) *Electronic SED (AES)—paper manifest.* If filing the SED information electronically (AES) and paper outbound manifest, carriers must annotate the outbound manifest with the appropriate AES exemption legends as provided in § 30.65 of this part.

(d) *Electronic SED (AES) and manifest.* If filing the SED information and outbound vessel manifest electronically through the AES, the carrier must adhere to the instructions specified in CBP Regulations (19 CFR, § 4.76) and § 30.60 of this part and transmit the appropriate AES proof of filing citation as provided in § 30.65 of this part.

(e) *When an SED is not required.* If an item does not require the filing of an SED, the appropriate exemption legends must be annotated on the outbound manifest or other appropriate commercial documents as provided in § 30.50 of this part.

(f) *Exports to Puerto Rico.* When filing paper manifests for shipments from the United States to Puerto Rico, the manifest shall be filed with the CBP Port Director where the merchandise is unladen in Puerto Rico.

(1) *Vessels.* Vessels transporting merchandise as specified in §30.20 of this part (except vessels exempted by paragraph (f)(4) of this section) shall file a complete Cargo Declaration Outward With Commercial Forms, CBP Form 1302-A. In addition, vessel carriers are required to perform the following:

(i) *Bunker fuel.* The manifest for vessels (including vessels carrying bunker fuel to be laden aboard vessels on the high seas) clearing for foreign countries shall show quantities and values of bunker fuel taken aboard at that port for fueling use of the vessel, apart from such quantities as may have been laden on vessels as cargo.

(ii) *Coal and fuel oil.* The quantity of coal shall be reported in metric tons (2240 pounds), and the quantity of fuel oil shall be reported in barrels of 158.98 liters (42 gallons). Fuel oil shall be described in such manner as to identify diesel oil as distinguished from other types of fuel oil.

(2) *Aircraft.* Aircraft transporting merchandise as specified in §30.20 of this part, shall file a complete manifest on CBP Form 7509, as required in CBP Regulations, 19 CFR 122.72 through 122.76. All the cargo so laden shall be listed and shall show, for each item, the air waybill number or marks and numbers on packages, the number of packages, and the description of the goods.

(3) *Rail carriers.* Rail carriers transporting merchandise as specified in §30.20 of this part shall file a car manifest. Such manifest shall be filed with the CBP Port Director at the port of exportation, giving the marks and numbers, the name of the shipper or consignor, description of goods and the destination thereof. The manifest may be a waybill, or copy thereof, or a copy of the manifest prepared for foreign customers.

(4) *Carriers not required to file manifests.* Carriers exempted from filing manifests are required, upon request, to present to the CBP Port Director the proof of filing citations, SED exemption legends, or AES exemption legends for each shipment. Failure of the carrier to do so constitutes a violation of the provisions of these regulations, and renders such carrier subject

to the penalties provided for in §30.95 of this part.

[68 FR 42539, July 17, 2003]

§ 30.22 Requirements for the filing of SEDs or AES exemption legends and AES proof of filing citations by departing carriers.

(a) To meet the requirements of §30.20 for the filing of Shipper's Export Declarations, every departing carrier transporting merchandise as specified in §30.20, including vessels, aircraft, rail carriers, trucks and other vehicles, ferries, and every other carrier shall deliver to the CBP Director at the port of exportation (for shipments from the United States to Puerto Rico, at the port of arrival in Puerto Rico), with the manifest of the carrier, if a manifest is required by the regulations in this part, Shipper's Export Declarations prepared and signed by the exporters, or their agents, covering all the cargo for which such Shipper's Export Declarations are required by the regulations in this part. When the export information for a shipment is filed electronically via the AES, the carrier is responsible for transmitting the appropriate AES exemption legend as provided in §30.65 of this part and the AES proof of filing citation as provided in the ITAR (22 CFR, part 121) for USML shipments. Such transmittal shall be without material change or amendment of the proof of filing citation as provided to the carrier by the USPPPI or the authorized agent.

(b) The exporting carrier shall be responsible for the accuracy of the following items of information (where required) on the declaration: Name of carrier (including flag if vessel carrier), U.S. CBP port of exportation, method of transportation from the United States, foreign port of unloading, the bill of lading or air waybill number, and whether or not containerized. If the export information is filed electronically via the AES, the carrier is responsible for transmitting to the CBP Port Director at the port of exportation the appropriate AES exemption legend as provided in §30.65 of this part and the AES proof of filing citation as provided in ITAR (22 CFR, part 121) for USML shipments. Such transmittal shall be without material change or

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amendment of the exemption legend or the proof of filing citation as provided to the carrier by the USPPI or the authorized agent. For shipments to Canada exempt from Shipper's Export Declaration filing requirements (See §30.58), the exporting carrier shall enter the U.S. CBP port of exportation and method of transportation from the United States on the bill of lading, air waybill, or other documents that they prepare.

(c) Except as provided in paragraph (d) of this section, when a transportation company finds, prior to the filing of declarations and manifest as provided in paragraph (a) of this section, that due to circumstances beyond the control of the transportation company or to inadvertence, a portion of the merchandise covered by an individual Shipper's Export Declaration has not been exported on the intended carrier, the transportation company shall correct the descriptions and the quantity, value and shipping weight (if any) amounts shown on the declaration to reflect the amount actually exported on the carrier named in the Shipper's Export Declaration. If a short shipment of this type is discovered by the carrier after the Shipper's Export Declaration in question has been delivered to the District Director of CBP, the transportation company will immediately notify the District Director of CBP so that a correction can be made by the Director on all copies of the declaration if it is still in his possession. If the statistical copy of the declaration has been transmitted by the Director to the Bureau of the Census at the time of such notification, the Director will require the exporter (or his agent) to file a "Correction Copy" of the originally filed Shipper's Export Declaration as described in §30.16 of these regulations. If the balance of the short-shipped merchandise is subsequently exported, a new Shipper's Export Declaration, complete in all detail, will be required. If the short-shipped merchandise is exported on a carrier of the transportation company named in the original declaration, and if such exportation is made within a reasonable period, the District Director of CBP may accept a declaration executed by such transportation company; otherwise the

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new declaration shall be executed by the exporter or his agent. In any event, the new declaration shall contain the following statement:

These commodities or technical data were included, but not shipped, on a Shipper's Export Declaration filed at _____ (Port) on _____ (Date).

(d) When a shipment by air covered by a single Shipper's Export Declaration is divided by the transportation company and exported in more than one aircraft of the transportation company, the "split shipment" procedure provided in §30.41 shall be followed by the transportation company in delivering manifests and Shipper's Export Declarations to the District Director of CBP.

(e) Exporting carriers are authorized to amend incorrect shipping weights reported on Shipper's Export Declarations, and to prorate total shipping weights among the individual commodities, where such carriers are able to do so based upon information in their possession.

(f) Information on items identified on the CCL of the EAR (15 CFR Supp. No. 1 to part 774) or the USML of the ITAR (22 CFR, part 121) that would otherwise require the filing of an SED, must be filed through AES. The exporting carrier must not accept paper SEDs or cargo that does not have the appropriate AES filing exemption legend as set forth in §30.65 of this part and the AES proof of filing citation as provided for in the ITAR (22 CFR, part 121) for USML shipments. Acceptance of paper SEDs or cargo for items on the CCL or USML without the appropriate exemption legend or proof of filing citation constitutes a violation of the provisions of these regulations, and renders such carrier subject to the penalties provided for in §30.95 of this part.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35-2A, Aug. 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 43 FR 56030, Nov. 30, 1978; 44 FR 1971, Jan. 8, 1979; 55 FR 49615, Nov. 30, 1990; 58 FR 41424, Aug. 4, 1993; 68 FR 42540, July 17, 2003]

§ 30.23 Requirements for the filing of Shipper's Export Declarations by pipeline carriers.

The operator of a pipeline may transport merchandise to a foreign country without prior filing of Shipper's Export Declarations, on the condition that within 4 days following the end of each calendar month the pipeline operator will deliver to the CBP Director Shipper's Export Declarations prepared by the exporter or his agent covering all exportations through the pipeline to each consignee during the month. If the merchandise transported by pipeline is identified on the CCL of the EAR (15 CFR Supplement No. 1 to part 774) or the USML of the ITAR (22 CFR, Part 121), and requires an SED, the data regarding the shipment must be filed electronically through the AES.

[41 FR 9134, Mar. 3, 1976, as amended at 68 FR 42540, July 17, 2003]

§ 30.24 Clearance or departure of carriers under bond on incomplete manifest or Shipper's Export Declarations.

(a) For purposes of the regulations in this part, except when carriers are transporting merchandise from the United States to Puerto Rico, clearance (where clearance is required) or permission to depart (where clearance is not required) may be granted to any carrier by the CBP Director prior to the filing of a complete manifest as required under the regulations in this part, or prior to the filing by the carrier of all required Shipper's Export Declarations, provided that a bond as specified in paragraph (b) of this section is filed with the CBP Director. The condition of the bond shall be that a complete manifest, where a manifest is required by the regulations in this part and all required Shipper's Export Declarations, shall be filed by the carrier not later than the fourth business day after clearance (where clearance is required) or departure (where clearance is not required) of the carrier except as otherwise specifically provided in paragraphs (a) (1) and (2) of this section. For carriers transporting merchandise from the United States to Puerto Rico, if the complete manifest, as required, and all required Shipper's Export Declarations are not available for filing

with the CBP Director in Puerto Rico within one business day after arrival, a bond, as specified in paragraph (b) of this section shall be filed with the CBP Director in Puerto Rico.

(1) For shipments aboard a U.S. flag carrier between the United States and Puerto Rico, or from the United States or Puerto Rico to the Virgin Islands of the United States, the condition of the bond shall be that a complete manifest (where a manifest is required) and all required Shipper's Export Declarations shall be filed by the carrier not later than the seventh business day after departure or in the case of shipments from the United States to Puerto Rico, the seventh business day after arrival.

(2) For rail carriers to Canada, the condition of the bond shall be that the manifest and all required Shipper's Export Declarations shall be filed not later than the 15th business day after departure.

In the event that any required manifest and all required Shipper's Export Declarations are not filed by the carrier within the period provided by the bond, then a penalty of \$50 shall be exacted for each day's delinquency beyond the allowed period of 4 days, 7 days, or 15 days, as appropriate; and if the completed manifest, where required, and all required Shipper's Export Declarations are not filed within 3 days following the period of 4 days, 7 days, or 15 days, allowed under the bond, then for each succeeding day of delinquency a penalty of \$100 shall be exacted, but no penalty shall exceed \$1,000 in total. Remission or mitigation of the penalties provided herein may be granted in those cases where, in the judgment of the administering authority provided in paragraph (b) of this section, the penalties were incurred without willful negligence or fraud, or other circumstances justify a remission or mitigation.

(b) Bonds filed in accordance with the provisions of this § 30.24 may take the form of a single entry bond on CBP Form 7567 in the amount of \$1,000 or of a term or blanket bond on CBP Form 7569 in the amount of \$10,000 or such larger amount as the Secretary of the Treasury may prescribe, or in other approved form. Except as provided below in this paragraph, there shall be shown

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on the bond, or on a separate listing which refers to and is made a part of the bond, a pro forma list of shipments on board the departing carrier for which Shipper's Export Declarations have not been filed with the CBP Director. The list shall show for each such shipment the name of the shipper, the country to which exported, marks and numbers of the packages, the number and kind of packages, a description of the goods and the value (or estimated value). However, where such waiver will not interfere with the ability of the CBP Director to check on performance under the bond, or with the identification of the shipment for purposes of obtaining statistical information in the event of failure of performance under the bond, the CBP Director may waive the requirement for the pro forma list of shipments for which declarations are missing, or may accept a list containing less than the items of information enumerated above. Approval of bonds and administration of the provisions of the regulations in this part relating to performance by carriers under such bonds, including remission and mitigation of penalties incurred by the carriers, are hereby delegated to the Commissioner of CBP or his delegate to be carried out in accordance with the provisions of section 623 of the Tariff Act of 1930, as amended, and the regulations of the Bureau of Customs and Border Protection issued pursuant thereto.

[41 FR 9134, Mar. 3, 1976, as amended at 58 FR 41425, Aug. 4, 1993]

Subpart C—Special Provisions Applicable Under Particular Circumstances

§ 30.30 Values for certain types of transactions.

The following special arrangements govern the values to be reported for shipments of the following unusual types:

(a) *Subsidized exports of agricultural products.* Where provision is made for the payment of an export subsidy to the exporter for the exportation of agricultural commodities under a program of the Department of Agriculture, the value required to be shown

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on the export declaration is the f.a.s. value as defined in § 30.7(q), based on the selling price paid by the foreign importer, excluding the amount of the subsidy.

(b) *GSA exports of excess personal property.* For exports of General Services Administration excess personal property, the value to be shown on the Shipper's Export Declaration will be the total of the estimated "fair value," if any, at which the property was transferred to GSA by the holding agency, plus charges, when applicable, to the port of export, such as packing, rehabilitation, inland freight or drayage. The estimated "fair value" may be zero, or it may be a percentage of the original or estimated acquisition costs. (Export Declarations for such shipments will bear the notation "Excess Personal Property, GSA Regulations 1-III, 303.03.")

§ 30.31 Identification of certain non-statistical and other unusual transactions.

In order to enable the Bureau of the Census to make a judgment as to the statistical or other status of certain export transactions, Shipper's Export Declarations covering the following types of transactions should carry a statement beneath the commodity description clearly identifying the transactions as such:

(a) Merchandise exported for repair only, and other temporary exports to be returned to the United States which are not sold and do not enter the trade of the country to which shipped, e.g., merchandise for exhibition (not for exhibition and possible sale), horses or other animals for breeding or grazing, etc.

(b) The return of merchandise previously imported for repair only and other returns to the foreign shipper of temporarily imported merchandise (declared as such on importation) on which no alteration or processing has been performed; e.g., foreign merchandise being returned to the country of origin after importation into the United States for exhibition only.

(c) Shipments of material in connection with construction, maintenance, and related work being done on projects for the U.S. Armed Forces.

Equipment and other material shipped for temporary use on such projects and intended for return to the United States should be identified separately from construction material or other goods which will become a part of or which will be consumed in the construction or maintenance work.

§ 30.32 [Reserved]

§ 30.33 Vessels, planes, cargo vans, and other carriers and containers sold foreign.

(a) Vessels, locomotives, rail cars, ferries, trucks, other vehicles, trailers, pallets, cargo vans, lift vans, or similar shipping containers are not considered "shipped" in terms of these regulations in this part when they are moving, either loaded or empty, without transfer of ownership or title, in their capacity as carriers of merchandise or as instruments of such carriers, and Shipper's Export Declarations are not required therefor when so moving.

(b) However, Shipper's Export Declarations shall be filed for such items, when moving as merchandise pursuant to sale or other transfer from ownership in the United States to ownership abroad. When a new vessel built in the United States for foreign account clears under a certificate of record (Commerce Form 1316) a Shipper's Export Declaration must be furnished by the agents or prepared by CBP for statistical purposes. If a vessel, car, vehicle, or container, whether in service or newly built or manufactured, is sold or transferred to foreign ownership while in the CBP area of the United States or at a port in such area, Shipper's Export Declarations shall be filed in accordance with the general requirements of the regulations in this part, at the port through or from which the vessel, car, vehicle, or container first leaves the United States after sale or transfer. If the vessel, car, vehicle, or shipping container is outside the CBP area of the United States at the time of sale or transfer to foreign ownership, Shipper's Export Declarations shall be filed at the last port of clearance or departure from the United States prior to sale or transfer. The country of destination to be shown on the Shipper's Export Declaration for vessels sold foreign is the country of new ownership.

The country for which the vessel clears, or the country of registry of the vessel, should not be reported as the country of destination on the Shipper's Export Declaration unless such country is the country of new ownership.

§ 30.34 Return of exported cargo to the United States prior to reaching its final destination.

(a) When a vessel carrying cargo which cleared from a port in the U.S. CBP area returns to the U.S. CBP area before it reaches its destination and discharges any or all of its cargo in the United States, the CBP Director at the port of unloading shall notify the Foreign Trade Division, Bureau of the Census, of this fact. The letter of notification shall contain the following information: Name of the carrier, dates of clearance, manifest numbers assigned at the various CBP ports at which cargo was laden and the final disposition of all cargo. If the vessel returns to the port at which the cargo was originally laden, the letter of notification shall also include the bill of lading numbers shown on each export declaration filed at the time of clearance.

(b) For shipments by air where the Shipper's Export Declarations are filed at the port of lading, if it becomes necessary because of an emergency to unload part or all of the cargo at another port in the U.S. CBP area (other than the port in Puerto Rico or U.S. Possession which is its final destination), the Shipper's Export Declarations filed at the port of lading need not be cancelled if the merchandise is reloaded on another plane at the second port within a reasonable time and proceeds to its country of destination. If there is unreasonable delay in reloading, the originally filed declarations should be cancelled and new declarations should be filed at the second port of lading. If for any reason, the merchandise remains permanently in the United States, the CBP Director at the first port of lading must be notified to cancel the Shipper's Export Declarations which have been filed. This provision is not intended as an exception from the requirements of § 30.12 as to the place at which Shipper's Export Declarations are required to be filed; it is intended

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only for cases where an emergency requires an unintended unloading after the requirements of §30.12 have been met.

§§ 30.35–30.36 [Reserved]

§30.37 Exceptions from the requirement for reporting complete commodity detail on the Shipper's Export Declaration.

(a) Where it can be determined that particular types of U.S. Government shipments, or shipments for Government projects, are of such nature that they should not be included in the export statistics, and further, where no detriment to the export control program would be involved, special arrangements can sometimes be made to waive compliance with specific portions of the requirements of §30.7 with respect to the reporting of detailed information on the Shipper's Export Declaration. Such exceptions will be made only upon application by the exporter and specific authorization to the CBP Director and the exporter for the particular project or shipment, approved by both the Bureau of the Census and the Office of Export Administration, and will be conditioned upon a prescribed identification which must appear upon the declarations. The particular types of shipments for which such exceptions may be possible are as follows:

(1) Shipments to a contractor under a Department of Defense or other armed service contract for the construction of facilities for the use of the U.S. armed services.

(2) Temporary exports by or to U.S. Government agencies.

(3) Shipments of supplies and material to contractors in the Panama Canal Zone for the construction and/or maintenance of the Panama Canal Zone and its facilities.

(b) Special exemptions to specific portions of the requirements of §30.7 with respect to the reporting of detailed information on the Shipper's Export Declaration may also be granted by the Bureau of the Census with the concurrence of the Office of Export Administration for certain Department of Defense shipments, or shipments made on behalf of the Department of Defense, to foreign governments under

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the cash reimbursable provisions of the Mutual Defense Assistance Program (military sales), if and when arrangements have been made for the Bureau of the Census to obtain the desired statistical information other than through the reporting of complete commodity detail on the Shipper's Export Declaration.

§30.38 [Reserved]

§30.39 Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment.

(a) The Census Bureau, with the concurrence of appropriate government agencies, may authorize exemptions from the requirement of §30.6 that a separate Shipper's Export Declaration be filed for each shipment.

(b) Application for certification and approval to file shipper's export data electronically using the Automated Export System (AES) can be made directly to the Census Bureau in accordance with the provisions specified in §30.60. Certification and approval procedures and qualification standards for filing shipper's export data electronically are contained in §30.62.

(c) Authorization for other alternative methods of filing shipper's export information will be issued only when, in the judgment of the Census Bureau, complete and accurate information will be available on a prescribed basis from the records of the applicant and where the alternate filing method for shipments represents a reduction of reporting cost or burden. Where export control is a consideration, such authorizations will be granted only when, in the judgment of the appropriate controlling government agency, the applicant has demonstrated that it has established adequate internal operating procedures and has taken other satisfactory safeguards to assure compliance with export control regulations of the appropriate government agency or agencies.

[64 FR 40976, July 28, 1999]

§ 30.40 Single declaration for multiple consignees.

As a further exception to the requirements of § 30.6, shipper's are authorized, subject to the approval of the CBP Director, to file one Shipper's Export Declaration (in duplicate) for all shipments, other than those made to U.S. Government agencies, offices, establishments, or representatives of any of these which are laden on one vessel or aircraft and destined to go to one port in Puerto Rico, the Virgin Islands of the United States, or the Canal Zone. For such shipments no consignee information needs to be furnished whether such shipments are made to one or several consignees.

[41 FR 42645, Sept. 28, 1976]

§ 30.41 "Split shipments" by air.

When a shipment by air covered by a single Shipper's Export Declaration is divided by the exporting transportation company at the port where the declaration is filed, and part of the shipment is exported on one aircraft and part on another aircraft of the same transportation company, the following procedure shall apply:

(a) The carrier will deliver the manifest copy of the declaration to the District Director of CBP with the manifest covering the flight on which the first part of the split shipment is exported, and will make no changes on the declaration. However, the manifest will show in the "number of packages" column the actual portion of the declared total quantity being carried and will carry a notation to indicate "Split Shipment."

(b) On each subsequent manifest covering a flight on which any part of a split shipment is exported, a prominent notation "SPLIT SHIPMENT" will be made adjacent to the item on the manifest for ready identification. For the last shipment the notation will read "SPLIT SHIPMENT, FINAL."

Each subsequent manifest covering a part of a split shipment shall also show in the "number of packages" column only the merchandise carried on that particular flight and a reference to the total amount originally declared for export, e.g., 5 of 11, or 5/11; and immediately following the line showing the

portion of the split shipment carried on that flight, a notation will be made showing the air waybill number shown on the original Shipper's Export Declaration and the portions of the originally declared total carried on each previous flight together with the number and date of each such previous flight, e.g., original Shipper's Export Declaration AWB 123; 2 of 11 flight 36A, June 6; 4 of 11, flight 40X, June 10.

(c) Export declarations will not be required for these subsequent shipments.

Subpart D—Exemptions from the Requirements for the Filing of Shipper's Export Declarations**§ 30.50 Procedure for shipments exempt from the requirements for Shipper's Export Declarations.**

Except as provided below, where an exemption from the requirement for the filing of a Shipper's Export Declaration is provided in this subpart, a notation describing the basis for the exemption shall be made on the bill of lading, air waybill, or other loading document for carrier use, with a reference to the number of the section in this part where the particular exemption is provided so that the carrier at the time of lading, and the CBP Director at the time of exportation, may verify that no declaration is required. If none of the above named documents is used, the person transporting the merchandise must be prepared to identify to the CBP Director at the port of exportation, at the time of exportation but prior to departure, any merchandise which is exempt from the requirement for the filing of a Shippers' Export Declaration and explain to the CBP Director the basis for the exemption. Where shipments are exempt from the requirement for Shipper's Export Declarations on the basis of value and destination, the appearance of the value and destination on the bill of lading, air waybill, or other loading document for carrier use, shall be acceptable as evidence of the exemption, and no reference need be made to the particular section of these regulations where the exemption is provided.

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§ 30.51 Government shipments not generally exempt.

Except as provided below in this subpart, Shipper's Export Declarations are required for exports by or to U.S. Government agencies, whether or not shipped on a Government bill of lading. No general exemption is provided for Government shipments, as such.

§ 30.52 Special exemptions for shipments to the U.S. armed services.

Shipper's Export Declarations are not required for the following types of shipments to the U.S. armed services:

(a) All commodities, whether shipped commercially or through government channels, consigned to the U.S. armed services for their exclusive use, including shipments to armed services exchange systems. (This exemption does not apply to shipments which are for the ultimate use of the U.S. armed services but which are not consigned to the U.S. armed services. However, special exceptions to the requirements of these regulations which may in some circumstances apply to shipments for the ultimate use of the U.S. armed services but not so consigned are provided in § 30.37.)

(b) Department of Defense Military Assistance Program Grant-Aid shipments being transported as Department of Defense cargo under the provisions of CBP Circular Letters VES-5-MA, March 8, 1954, (MC 133), VES-5-MA, June 17, 1954 (MC 133 S.1), VES-5-MA, May 24, 1956 (MC 133 S.2) and RES-20-MC, January 25, 1960 (CC 76). Under arrangements with the Department of Defense, information on these shipments for inclusion in U.S. export statistics will be furnished directly to the Bureau of the Census by the Department of Defense. This exception from the filing of Shipper's Export Declarations does not apply to Military Assistance Program Grant-Aid shipments to which a foreign government has taken title before exportation or to any Grant-Aid Military-Aid Program shipment moving in any manner other than as Department of Defense cargo. (See § 30.37 for possible exceptions to the full reporting requirements of § 30.7 for certain military sales shipments not exempt from the requirement for the Shipper's Export Declaration.)

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§ 30.53 Special exemptions for certain shipments to U.S. Government agencies and employees.

Shipper's Export Declarations are not required for the following types of shipments to U.S. Government agencies and employees:

(a) Office furniture, office equipment, and office supplies shipped to and for the exclusive use of U.S. Government offices.

(b) Household goods and personal property shipped to and for the exclusive and personal use of U.S. Government employees.

(c) Food, medicines, and related items and other commissary supplies shipped to U.S. Government offices or employees for the exclusive use of such employees, or to U.S. Government employee cooperative or other associations for subsequent sale or other distribution to such employees.

(d) Books, maps, charts, pamphlets, and similar articles shipped by U.S. Government offices to U.S. or foreign libraries, government establishments or similar institutions.

(e) All commodities shipped to and for the exclusive use of the Panama Canal Zone Government or the Panama Canal Company.

§ 30.54 [Reserved]

§ 30.55 Miscellaneous exemptions.

Shipper's Export Declarations are not required for the following kinds of shipments:

(a) Diplomatic pouches and their contents.

(b) Human remains and accompanying appropriate receptacles and flowers.

(c) Shipments from one point in the United States to another thereof by routes passing through Mexico.

(d) Shipments from one point in Mexico to another point thereof by routes through the United States.

(e) Shipments, other than by vessel, or merchandise for which no validated export licenses are required, transported in bond through the United States, and exported from another U.S. port, or transshipped and exported directly from the port of arrival.

(f) Shipments to foreign libraries, government establishments, or similar institutions, as provided in § 30.53(d).

(g) Shipments of single gift parcels as authorized by the Bureau of Industry and Security under License Exception GFT, see 15 CFR 740.12 of the EAR.

(h) Except as noted in paragraph (h)(2) of this section exports of commodities where the value of the commodities, shipped from one exporter to one consignee on a single exporting carrier, classified under an individual Schedule B number, is \$2,500 or less.

(1) This exemption applies to individual Schedule B commodity numbers regardless of the total shipment value. In instances where a shipment contains a mixture of individual Schedule B commodity numbers valued \$2,500 or less and individual Schedule B commodity numbers valued over \$2,500, only those commodity numbers valued \$2,500 or more need be reported on a Shipper's Export Declaration or AES record.

(2) This exemption does not apply to exports:

(i) Destined for Cuba, Iran, Iraq, Libya, North Korea, Serbia (excluding Kosovo), Sudan and Syria.

(ii) Requiring a Department of Commerce license (15 CFR Parts 730 through 774 of the EAR).

(iii) Requiring a Department of State, Office of Defense Trade Controls export license under the International Traffic In Arms Regulations (ITAR) (22 CFR Parts 120 through 130).

(iv) Subject to the ITAR but exempt from license requirements.

(v) Requiring a Department of Justice, Drug Enforcement Administration export permit (21 CFR Part 1312). This exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on \$2,500 and under shipments.

(vi) Classified as rough diamonds under 6-digit Harmonized System sub-headings 7102.10, 7102.21, and 7102.31, regardless of value.

(i) Shipments of interplant correspondence, executed invoices and other documents, and other shipments of company business records from a U.S. firm to its subsidiary or affiliate.

(j) Shipments of pets as baggage, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.

(k) Shipments for use in connection with NASA tracking systems under Office of Export Administration Project License DL-5355-S.

(l) Shipments of aircraft parts and equipment, and food, saloon, slop chest, and related stores, provisions, and supplies for use on aircraft, by a U.S. airline to its own installations, aircraft, and agents abroad, under Department of Commerce, Office of Export Administration General License RCS.

(m) Shipments for use in connection with NOAA operations under the Office of Export Administration General License G-NOAA.

(n) Exports of technology and software as defined in 15 CFR Part 772 of the EAR that do not require an export license, except that an SED or AES record is required for mass market software. For purposes of the FTSR, mass market software is defined as software that is generally available to the public by being sold at retail selling points, or directly from the software developer or supplier, by means of over the counter transactions, mail order transactions, telephone transactions, or electronic mail order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier.

(o) Intangible exports of software and technology, such as downloaded software and technical data, including technology and software that requires an export license and mass market software exported electronically.

[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 7214, Feb. 18, 1982; 55 FR 21187, May 23, 1990; 55 FR 49615, Nov. 30, 1990; 63 FR 45697, Aug. 27, 1998; 65 FR 42564, July 10, 2000; 68 FR 59879, Oct. 20, 2003]

§ 30.56 Conditional exemptions.

Shipper's Export Declarations are not required for the following classes of commodities when they are not shipped as cargo under a bill of lading or an air waybill and do not require a validated export license, but the exporter should

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be prepared to make oral declaration to the CBP Director, if required:

(a) Baggage and personal effects, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft, such as:

(1) Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects and their containers.

(2) Usual and reasonable kinds and quantities of furniture, household effects, household furnishings, and their containers.

(3) Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

Provided, That the above-indicated baggage and personal effects (i) shall include only such articles as are owned by such person or members of his immediate family; (ii) shall be in his possession at the time of or prior to his departure from the United States for the foreign country; (iii) are necessary and appropriate for the use of such person or his immediate family; (iv) are intended for his use or the use of his immediate family; and (v) are not intended for sale.

(b) Tools of trade are usual and reasonable kinds and quantities of commodities and software, and their containers, that are intended for use by individual exporters or by employees or representatives of the exporting company in furthering the enterprises and undertakings of the exporter abroad. Commodities and software eligible for this exemption are those that do not normally require an export license or that are exported without a license as specified in 15 CFR 740.9 of the EAR (15 CFR chapter VII, subchapter C) and are subject to the following provisions:

(1) Are owned by the individual exporter or exporting company;

(2) Accompany the individual exporter, employee or representative of the exporting company;

(3) Are necessary and appropriate and intended for the personal and/or business use of the individual exporter, em-

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ployee or representative of the company or business;

(4) Are not for sale; and

(5) Are returned to the United States no later than one year from the date of export.

(c) Carriers' stores (including merchandise carried in ships aboard carriers for sale to passengers), supplies, and equipment for departing vessels, planes, or other carriers, including usual and reasonable kinds and quantities of bunker fuel, deck engine and steward department stores, provisions and supplies, medicinal and surgical supplies, food stores, slop chest articles, and saloon stores or supplies for use or consumption on board and not intended for unloading in a foreign country, and including usual and reasonable kinds and quantities of equipment and spare parts for permanent use on the carrier when necessary for proper operation of such carrier and not intended for unloading in a foreign country. Hay, straw, feed, and other appurtenances necessary to the care and feeding of livestock while enroute to a foreign destination are considered part of carriers' stores of carrying vessels, trains, planes, etc.

(d) Dunnage of usual and reasonable kinds and quantities necessary and appropriate to stow or secure cargo on the outgoing or any immediate return voyage of an exporting carrier, when exported solely for use as dunnage and not intended for unloading in a foreign country.

[41 FR 9134, Mar. 3, 1976, as amended at 62 FR 49437, Sept. 22, 1997]

§ 30.57 Information on export declarations for shipments of types of goods covered by § 30.56 not conditionally exempt.

(a) In those cases where Shipper's Export Declarations are required for articles enumerated in § 30.56 (a) through (d) only by virtue of their being shipped under a bill of lading or an air waybill (no validated license is required) the export declaration should clearly show in the column for commodity description, in lieu of the complete commodity description a statement that the shipment consists of baggage, personal effects, household effects, ship's stores, crew's effects, or as

appropriate. In such cases, Schedule B commodity numbers should not be shown on the declarations.

(b) In those cases where the articles enumerated in §30.56 (a) through (d) require a validated export license (whether or not shipped under a bill of lading or an air waybill) the Shipper's Export Declaration must identify the shipment as baggage, personal effects, etc., and must contain all the information normally required for any exportation made under a validated export license, *i.e.*, complete commodity description, license number, Schedule B number, quantity, value, etc.

§ 30.58 Exemption for shipments from the United States to Canada.

(a) Except as noted in paragraph (c) of this section, shipments originating in the United States where the country of ultimate destination (see §30.7(i)) is Canada are exempt from the Shipper's Export Declaration requirements of this part. This exemption also applies to shipments from one point in the United States or Canada to another point thereof by routes passing through the other country.

(b) The Harbor Maintenance Fee applies to shipments by vessel exempt from Shipper's Export Declaration requirements by virtue of being destined to Canada.

(c) This exemption does not apply to the following shipments: (The Bureau of the Census also reserves the right to reinstate the Shipper's Export Declaration requirements of this part in specific instances for the purpose of ensuring statistical accuracy.)

(1) Requiring a Department of Commerce license.

(2) Requiring a Department of State, Office of Defense Trade Controls, export license under the International Traffic in Arms Regulations (ITAR—22 CFR parts 121–130).

(3) Subject to the ITAR but exempt from license requirements.

(4) Requiring a Department of Justice, Drug Enforcement Administration, export declaration (21 CFR part 1313).

(5) For storage in Canada but ultimately destined for third countries, the specific country of destination being unknown at the time of export to

Canada (see §30.39 for reporting requirements).

(6) Shipments of rough diamonds exported (reexported) to Canada for use or consumption in Canada.

(7) For all exports of items subject to the EAR (15 CFR Parts 730 through 799) that will be transhipped through Canada to a third destination, that would require an SED, AES record, or Commerce license if shipped directly to the final destination from the United States (see §30.55(h)(2), including exports of items subject to the EAR that will be transhipped through Canada to Cuba, Iran, Iraq, Libya, North Korea, Serbia (excluding Kosovo), Sudan, and Syria.

[55 FR 49615, Nov. 30, 1990, as amended at 65 FR 42564, July 10, 2000; 68 FR 59879, Oct. 20, 2003]

Subpart E—Electronic Filing Requirements—Shipper's Export Information

SOURCE: 64 FR 40977, July 28, 1999, unless otherwise noted.

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).

The Automated Export System (AES) transmissions by exporters or their authorized filing agents that meet the requirements of this subpart constitute the Shipper's Export Declaration (SED) for purposes of this part. This section outlines the general requirements for participating in the AES. Several filing options are available for transmitting shipper's export data. The first option is the standard paper filing of the SED. The AES also provides AES participants with three electronic filing options for submission of shipper's export data.

(a) *Participation.* Filing using the AES is mandatory for those items identified on the CCL of the EAR (15 CFR Supplement No. 1 to part 774) or the USML of the ITAR (22 CFR, part 121) and that would otherwise require the filing of an SED. Filing using the AES also is mandatory for all exports (reexports) of rough diamonds regardless of destination, method of transport, or value. All other participation in the

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AES is voluntary. Information for items identified on the CCL or the USML filed via AES must be filed by the USPPI or the authorized agent. A Data Entry Center (DEC), service center, or port authority may transmit an AES record for CCL or USML items, completed by the USPPI or the authorized agent, without obtaining a power of attorney or written authorization. A DEC, service center, or port authority must have a power of attorney or written authorization from the USPPI or foreign principal party in interest if it completes any export information in AES for CCL or USML shipments. Filers may also use a software package designed by an AES certified software vendor. Certified trade participants (filing agents) can transmit to and receive data from the AES pertaining to merchandise being exported from the United States. Participants in the AES process, who may apply for AES certification, include USPPIs or the authorized agents, ocean carriers, software vendors, or any organization acting as a service center. Once becoming certified, an AES filer (filing agent) must agree to stay in complete compliance with all export rules and regulations.

(b) *Letter of Intent.* The first requirement for all participation in AES, including approval for Option 4 filing privileges, is to submit a complete and accurate Letter of Intent to the Census Bureau. The Letter of Intent is a written statement of a company's desire to participate in AES. It must set forth a commitment to develop, maintain, and adhere to CBP and Census Bureau performance requirements and operations standards. Once the Letter of Intent is received, a U.S. CBP Client Representative and a Census Bureau Client Representative will be assigned to work with the company. The Census Bureau will forward additional information to prepare the company for filing export data using the AES. The format and content for preparing the Letter of Intent is provided in Appendix A of this part.

(c) *General filing and transmission requirements.* The data elements required for filing shipper's export data electronically are contained in § 30.63. For AES, the difference is that the certified

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filer must transmit the shipper's export information electronically using the AES, rather than delivering the paper SED to the carrier. When transmitting export information electronically, the AES filers must comply with the data transmission procedures determined by CBP and the Census Bureau (See § 30.62 for AES certification, qualifications, and standards).

(d) *General responsibilities of exporters, filing agents, and sea carriers—(1) Exporter and authorized filing agent responsibilities.* The exporter and/or their authorized agents, certified for AES filing, are responsible for:

(i) Transmitting complete and accurate information to the AES (see § 30.4 (a) and § 30.7 (d)(1), (2), and (e) for a delineation of responsibilities of exporters and authorized forwarding agents);

(ii) Transmitting information to the AES in a timely manner in accordance with the provisions and requirements contained in this subpart;

(iii) Responding to messages identified as fatal error, warning, verify, or reminder generated by AES in accordance with the provisions contained in this subpart;

(iv) Providing the exporting carrier with the required exemption statements or citations when an item or shipment is exempt from SED filing requirements in accordance with provisions contained in this subpart;

(v) Transmitting corrections or cancellations to information transmitted to the AES as soon as the need for such changes is determined in accordance with provisions contained in this subpart; and

(vi) Maintaining all necessary and proper documentation related to the AES export transaction in accordance with provisions contained in this subpart.

(2) *Sea carrier responsibilities.* The exporting sea carrier also is responsible for transmitting timely, accurate, and complete manifests and bills of lading information to AES for all cargo being shipped. The exporting sea carrier is also responsible for transmitting booking, receipt of booking, departure, and manifest messages to AES. CBP and Census Bureau officials, with written agreement of the exporting sea carrier, can provide for alternative methods of

filing manifest and SED information to that found in this Subpart. For exporting carrier responsibilities, see Subpart B, of this part, General Requirements—Exporting Carriers. For electronic filing of manifest information using the AES, see 19 CFR 4.76, *Procedures and responsibilities for electronic filing of sea manifests through AES*.

[64 FR 40977, July 28, 1999, as amended at 68 FR 42540, July 17, 2003; 68 FR 59879, Oct. 20, 2003]

§ 30.61 Electronic filing options.

As an alternative to filing paper SEDs (Option 1), two electronic filing options (Option 2 and 4) for transmitting shipper's export information are available to U.S. principal parties or the authorized filing agent. The electronic filing Option 4 takes into account that complete information concerning export shipments is not always available prior to exportation. Information on the export of items identified on the CCL of the EAR (15 CFR Supplement No. 1 to part 774) or the USML of the ITAR (22 CFR, part 121) that would otherwise require the filing of an SED must be filed using Option 2. Option 4 may only be used when the appropriate licensing agency has granted the USPPI authorization to use this option. The available AES electronic filing options are as follows:

(a) *AES with full information transmitted prior to exportation (Option 2)*. Option 2 provides for the electronic filing of *all* information required for exports to AES prior to exportation (see § 30.63 for information required to be reported electronically). Full predeparture information is always required to be transmitted to AES for the following specific types of shipments:

(1) Used self-propelled vehicles (except those shipped between the United States and Puerto Rico) as defined in 19 CFR 192.1

(2) Essential and precursor chemicals requiring a permit from the Drug Enforcement Administration;

(3) Shipments defined as "sensitive" by Executive Order; and

(4) Shipments where full export information is required prior to exportation by a federal government agency.

(5) Shipments of rough diamonds exported (reexported) in accordance with

the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592).

(b) *AES with no information transmitted prior to exportation (Option 4)*. Option 4 is only available for approved USPPIs and requires *no* export information to be transmitted electronically using AES prior to exportation. For approved Option 4 filers, all shipments (other than those requiring an export license, unless specifically approved by the licensing agency for Option 4 filing, and those specifically required under electronic filing Option 2), by all methods of transportation, may be exported with transmission as soon as it is known, but no later than ten (10) working days from the date of exportation. Shipments of used vehicles between the United States and Puerto Rico may be filed using Option 4. Certified AES authorized filing agents or service centers may transmit information post departure on behalf of approved Option 4 USPPIs, or the USPPI may transmit the data. All USPPIs filing a Letter of Intent for Option 4 filing privileges will be cleared through a formal review process by CBP, the Census Bureau, and other federal government agencies participating in the AES (partnership agencies) in accordance with provisions contained in § 30.62. The USPPI or the authorized agent must provide the exporting carrier with the USPPI's Option 4 AES exemption legend as described in § 30.65.

[64 FR 40977, July 28, 1999, as amended at 68 FR 42540, July 17, 2003; 68 FR 59879, Oct. 20, 2003]

§ 30.62 AES Certification, qualifications, and standards.

Certification for AES filing will apply to the USPPI, authorized forwarding agent, ocean carrier, or any organization acting as a service center transmitting export information electronically using the AES.

(a) *AES certification process*. Applicants interested in AES filing must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60. CBP and the

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Census Bureau will assign client representatives to work with the applicant to prepare them for AES certification. The AES applicant must perform an initial two-part communication test to ascertain whether the applicant's system is capable of both transmitting data to, and receiving data from, the AES. The applicant must demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The applicant must successfully transmit the AES certification test. The CBP's and Census Bureau's client representatives provide assistance during certification testing. These representatives make the sole determination as to whether or not the applicant qualifies for certification. Upon successful completion of certification testing, the applicant's status is moved from testing mode to operational mode. Upon certification, the filer will be required to maintain an acceptable level of performance in AES filings. The certified AES filer may be required to repeat the certification testing process at any time to ensure that operational standards for quality and volume of data are maintained. The Census Bureau will provide the certified AES filer with a certification notice after the applicant has been approved for operational status. The certification notice will include:

(1) The date that filers may begin transmitting "live" data electronically using AES;

(2) Reporting instructions; and

(3) Examples of the required AES exemption legends.

(b) *AESDirect certification process.* Applicants interested in *AESDirect* filing or its by-products *AESWebLink*, *AESPCLink*, or *AES EDI Upload* must complete the online *AESDirect* registration form. After submitting the registration, an *AESDirect* filing account is created for the filing company. The applicant will receive separate e-mails providing an *AESDirect* user name, temporary administrator code, and temporary password. The filer uses the temporary administrator code to create a permanent administrator code that allows the user to create a perma-

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nent password. The user name and new permanent password will allow the filer to complete certification testing. Upon successful completion of the certification testing, notification by e-mail will be sent when an account is fully activated for filing via *AESDirect*. Print the page congratulating the filer on passing the test for retention purposes. The activation notice will specify which AES filing status the account has been authorized.

(c) *Filing agent certification.* Once an authorized filing agent has successfully completed the certification process, the USPPI using that agent does not need further AES certification. The certified filing agent must have a properly executed power of attorney, a written authorization from the USPPI or foreign principal party in interest, or an SED signed by the USPPI to transmit their data electronically using the AES. The USPPI or authorized agent that utilizes a service center or port authority must complete certification testing, unless the service center or port authority has a formal power of attorney or written authorization from the USPPI to file the export information on behalf of the USPPI.

(d) *AES filing standards.* The certified AES filer's data will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will notify the AES filer if the filer fails to maintain an acceptable level of quality, timeliness, and coverage in the transmission of export data or fails to maintain compliance with Census Bureau regulations contained in this Section. The Census Bureau, if necessary, will take appropriate action to correct the specific situation(s). In the case of *AESDirect*, when submitting a registration form to *AESDirect*, the registering company is certifying that it will be in compliance with all applicable laws and regulations. This includes complying with the following security requirements:

(1) *AESDirect* user names, administrator codes, and passwords are to be neither written down nor disclosed to any unauthorized user or any persons outside of the registered company. Filers must change administrator codes or passwords for security purposes when prompted to do so.

(2) Registered companies are responsible for those persons having a user name, administrator code, and password. If an employee with access to the user name, administrator code, and password leaves the company or otherwise is no longer an authorized user, the company must change the password, administrator code, and user name in the system and must do so immediately in order to ensure the integrity and confidentiality of Title 13 data.

(3) Antivirus software must be installed and set to run automatically on all computers that access *AESDirect*. All *AESDirect* registered companies will maintain subscriptions with their antivirus software vendor to keep antivirus lists current. Registered companies are responsible for performing full scans of these systems on a regular basis and eliminating any virus contamination. If the registered company's computer system is infected with a virus, the company should refrain from using *AESDirect* until it is virus free. Failure to comply with these requirements will result in immediate loss of privilege to use *AESDirect* until the registered company can establish to the satisfaction of the Census Bureau's Foreign Trade Division Computer Security Officer that the company's computer systems accessing *AESDirect* are virus free.

(e) *Criteria for denial of applications requesting Option 4 filing status; appeal procedure.* Approval for Option 4 filing privileges will apply only to exporters. However, forwarding agents may apply for Option 4 filing privileges on behalf of an individual exporter. Option 4 applicants must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60.

(1) *Option 4 approval process.* The Census Bureau will distribute the Letters of Intent for Option 4 filing privileges to CBP and the other partnership agencies participating in the AES Option 4 approval process. Failure to meet the standards of the Census Bureau, CBP, or one of the partnership agencies is reason for nonselection or denial of the application for Option 4 filing privileges. Each partnership agency will develop its own internal Option 4 acceptance standards, and each agency will

notify the Census Bureau of the applicant's failure to meet that agency's acceptance standards. If the Census Bureau does not receive either notification of denial, or a request for extension from the partnership agency within thirty (30) calendar days after the date of referral of the Letter of Intent to the partnership agency, the applicant is deemed to be approved by that agency. The Census Bureau will provide the Option 4 applicant with an approval or denial letter. If a denial letter is issued, the Census Bureau will indicate the partnership agency that denied the application. The applicant must contact the denying partnership agency for the specific reason(s) for denial.

(2) *Grounds for denial of Option 4 filing status.* The Census Bureau may deny an exporter's application for Option 4 filing privileges for any of the following reasons:

(i) Applicant is not an established exporter, as defined in this chapter, with regular operations;

(ii) Applicant has failed to submit SEDs to the Census Bureau for processing in a timely and accurate manner;

(iii) Applicant has a history of non-compliance with Census Bureau export laws and regulations contained in this chapter;

(iv) Applicant has been indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter; and

(v) Applicant has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to any material fact.

(3) *Notice of nonselection and appeal procedures for Option 4 filing.* The Census Bureau will notify applicants in writing of the decision to either deny or approve the applicant for Option 4 filing privileges within thirty (30) days of receipt of the Letter of Intent by the Census Bureau, or if a decision cannot be reached at that time, the applicant will be notified of an expected date for a final decision as soon as possible

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after the thirty (30) calendar days. Applicants for Option 4 filing privileges denied Option 4 status by other partnership agencies must contact those agencies regarding the specific reason(s) for nonselection and for their appeal procedures. Applicants denied Option 4 status by the Census Bureau will be provided with a specific reason for nonselection and a Census Bureau point of contact in the notification letter. Option 4 applicants may appeal the Census Bureau's nonselection decision by following the appeal procedure and reapplication restriction provided in paragraph (b) (5) of this section.

(4) *Revocation of Option 4 filing privileges.* The Census Bureau may revoke Option 4 filing privileges of approved Option 4 exporters for the following reasons:

(i) The exporter has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to material fact;

(ii) The exporter submitting the Letter of Intent is indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter;

(iii) The exporter has failed to substantially comply with existing Census Bureau or other agency export regulations; or

(iv) The Census Bureau determines that continued participation in Option 4 by an exporter would pose a significant threat to national security interests such that their continued participation in Option 4 should be terminated.

(5) *Notice of revocation; appeal procedure.* Approved Option 4 filers whose Option 4 filing privileges have been revoked by other agencies must contact those agencies for their specific revocation and appeal procedures. When the Census Bureau makes a determination to revoke an approved Option 4 filer's AES Option 4 filing privileges, the exporter will be notified in writing of the reason(s) for the decision. The exporter may challenge the Census Bureau's decision by filing an appeal within thirty

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(30) calendar days of receipt of the notice of decision. In most cases, the revocation shall become effective when the exporter has either exhausted all appeal proceedings, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases when required by national security interests, revocations will become effective immediately upon notification. Appeals should be addressed to the Chief, Foreign Trade Division, Bureau of the Census, Washington, DC 20233. The Census Bureau will issue a written decision to the exporter within thirty (30) calendar days from the date of receipt of the appeal by the Census Bureau. If a written decision is not issued within thirty (30) calendar days, a notice of extension will be forwarded within that time period. The exporter will be provided with the reasons for the extension of this time period and an expected date of decision. Approved Option 4 exporters who have had their Option 4 filing status revoked may not reapply for this status for one year following written notification of the revocation. Such applications will not be considered before the one-year time period.

[64 FR 40977, July 28, 1999, as amended at 68 FR 42541, July 17, 2003]

§ 30.63 Information required to be reported electronically through AES (data elements).

The information (data elements) listed in this section is required for shipments transmitted electronically through AES. The data elements as they pertain to electronic reporting are defined as paragraphs (a), (b), and (c) of this section. Those data elements that are defined in more detail in other sections of the FTSR are so noted. The data elements identified as "mandatory" must be reported for each transmission. The data elements identified as "conditional" must be reported if they are required for or apply to the specific shipment. The data elements identified as "optional" may be reported at the discretion of the exporter.

(a) Mandatory data elements are as follows:

(1) *USPPI/USPPI identification*—(i) *Name and address of the USPPI.* For details on the reporting responsibilities of USPPIs, see § 30.4 and § 30.7 (d)(1), (2), (3), and (e).

(ii) *USPPI's profile.* The USPPI's EIN or Social Security Number (SSN) and the USPPI's name, address, contact, and telephone number must be reported with every shipment. If neither EIN or SSN is available for the USPPI, as in the case of a foreign entity being shown as the USPPI as defined in § 30.7(d), the border crossing number, passport number, or any other number assigned by CBP is required to be reported. (See § 30.7(d)(2) for a detailed description of the EIN.)

(2) *Date of exportation/date of arrival.* The exporter or the authorized forwarding or other agent in the export transaction must report the date the merchandise is scheduled to leave the United States for all modes of transportation. If the actual date is not known, report the best estimate of departure. The estimated date of arrival must be reported for shipments to Puerto Rico. (See § 30.7(r) for additional information.)

(3) *Ultimate consignee.* The ultimate consignee is the person, party, or designee on the export license who is located abroad and actually receives the export shipment. The ultimate consignee known at the time of export must be reported. For goods sold en route, report "SOLD EN ROUTE" and report corrected information as soon as it is known. (See § 30.7(f) for more information.)

(4) *U.S. state of origin.* Report the 2-character postal abbreviation for the state in which the merchandise begins its journey to the port of export. (See § 30.7(t)(1) and (2) for more information.)

(5) *Country of ultimate destination.* Report the 2-character International Standards Organization (ISO) code for the country of ultimate destination. The country of ultimate destination, as shown on the export license, or the country as known to the exporter or principal party in interest in the export transaction at the time of export is the country in which the merchandise is to be consumed or further processed or manufactured. For goods sold

en route, report the country of the first port of call and then report corrected information as soon as it is known. (See § 30.7(i) for more information.)

(6) *Method of transportation.* The method of transportation is defined as that by which the goods are exported or shipped. Report one of the codes listed in Part I of Appendix C of this part. (See § 30.7(b) for detailed information on method of transportation.)

(7) *Conveyance name.* The name of the carrier (sea—vessel name; others—carrier name) must be reported by the exporter or the exporter's agent as known at the time of shipment for all shipments leaving the country by sea, air, truck, or rail. Terms such as "airplane," "train," "truck," or "international footbridge" are not acceptable and will generate an error message. (See § 30.7(c) for more information.)

(8) *Carrier identification.* Report the 4-character Standard Carrier Alpha Code (SCAC) for vessel, rail, and truck shipments and the 2-or 3-character International Air Transport Association (IATA) Code for air shipments to identify the carrier actually transporting the merchandise out of the United States.

(9) *Port of export.* Report the code of the CBP port of export in terms of Schedule D, "Classification of CBP Districts and Ports." (See §§ 30.7(a) and 30.20(c) and (d) for more information on port of export.)

(10) *Related/nonrelated indicator.* Indicate if the shipment is between related parties. Report the information as defined in § 30.7(v).

(11) *Domestic or foreign indicator.* Indicate if the commodities are of domestic or foreign production. Report the information as defined in § 30.7(p).

(12) *Commodity classification number.* Report the 10-digit commodity classification number as provided in Schedule B, "Statistical Classification of Domestic and Foreign Commodities Exported from the United States" (Schedule B). The 10-digit commodity classification number provided in the Harmonized Tariff Schedule (HTS) may be reported in lieu of the Schedule B Commodity classification number except as noted in the headnotes of the HTS. Shipments of rough diamonds at the 10-

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digit Schedule B level that are classified under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31 must be reported electronically through the AES. (See §30.7(l) for detailed information.)

(13) *Commodity description.* Report the commercial description in sufficient detail to permit the verification of the commodity classification number. (See §30.7(l) for more information regarding reporting the description.)

(14) *First net quantity/unit of measure.* Report the primary net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS or as specified on the export license.

(15) *Gross shipping weight.* Report the gross shipping weight in kilograms for vessel, air, truck, and rail shipments. Include the weight of containers, but exclude the weight of carrier equipment. (See §30.7(o) for more information.)

(16) *Value.* The value shall be the selling price or cost if not sold, including inland freight, insurance, and other charges to the U.S. port of export. Report the value in U.S. currency. (See §30.7(q) for more information.)

(17) *Export information code.* Report the appropriate 2-character export information code as provided in Part II of Appendix C of this part.

(18) *Shipment reference number.* The filer of the export shipment provides a unique shipment reference number that allows for the identification of the shipment in their system. This shipment reference number must be unique for five years.

(19) *Line item number.* Report a line number for each commodity for a unique identification of the commodity.

(20) *Hazardous material indicator.* This is a “Yes” or “No” indicator identifying the shipment as hazardous as defined by the Department of Transportation.

(21) *In-bond code.* Report one of the 2-character in-bond codes listed in Part IV of Appendix C of this part to indicate the type of In-Bond or Not In-Bond shipment.

(22) *License code.* Report the 3-character code listed in Part III of Appendix C of this part to indicate the type

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of license, permit, license exemption, or no license required.

(b) Conditional data elements are as follows:

(1) *Forwarding agent/forwarding agent identification*—(i) *Name and address of the forwarding agent.* The forwarding agent is any person in the United States or under jurisdiction of the United States who is authorized by the exporter to perform the services required to facilitate the export of merchandise out of the United States or the person named in the validated export license. (See §§30.4(a) and 30.7(e) for details on responsibilities of forwarding agents).

(ii) *Forwarding agent’s profile.* The forwarding agent’s identification number, EIN, DUNS, or SSN and name and address must be reported with the initial shipment. Subsequent shipments may be identified by the identification number.

(2) *Intermediate consignee.* The intermediate consignee is the intermediary (if any) who acts in a foreign country as an agent for the exporter or the principal party in interest or the ultimate consignee for the purpose of effecting delivery of the export shipment to the ultimate consignee or the person named on the export license. (See §30.7(g) for more information.)

(3) *Foreign Trade Zone number.* Report the unique 5-character code assigned by the Foreign Trade Board that identifies the Foreign Trade Zone from which merchandise is withdrawn for export. (See §30.7(t)(3) for more information.)

(4) *Foreign port of unloading.* For sea shipments only, the code of the foreign port of unloading should be reported in terms of the 5-digit codes designated in Schedule K, “Classification of Foreign Ports by Geographic Trade Area and Country.” For air shipments from the United States to Puerto Rico, report the Puerto Rico port of unloading. For air shipments from Puerto Rico to the United States, report the United States port of unloading. Report the code of the port of unloading in terms of Schedule D, “Classification of CBP Districts and Ports.” (See §30.7(h) for more information on port of unloading.)

(5) *License number/Code of Federal Regulations (CFR) citation.* For licensable commodities, report the license number of the license issued for the merchandise. If no license is required, report the regulatory citation exempting the merchandise from licensing or the conditions under which the merchandise is being shipped that make it exempt from licensing.

(6) *Export Control Classification Number.* Report the Export Control Classification Number for merchandise as required by the Bureau of Industry and Security (BIS) Regulations (15 CFR Parts 730 through 774).

(7) *Second net quantity/unit of measure.* When Schedule B requires two units of quantity to be reported, report the second net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS. (See § 30.7(n) for more information.)

(8) *Used self-propelled vehicles.* Report the following items of information for used self-propelled vehicles as defined in 19 CFR 192.1:

(i) *Vehicle Identification Number.* Report the unique Vehicle Identification Number (VIN) in the proper format;

(ii) *Product Identification Number.* Report the Product Identification Number (PIN) for those used self-propelled vehicles for which there are no VINs;

(iii) *Vehicle title number.* Report the unique title number issued by the Motor Vehicle Administration; and

(iv) *Vehicle title state.* Report the 2-character postal abbreviation for the state or territory of the vehicle title.

(9) *Entry number.* Report the Import Entry Number when the export transaction is to be used as proof of export for import transactions such as In-Bond, Temporary Import Bond, Drawback, and so forth.

(10) *Waiver of prior notice.* This is a “Yes” or “No” indicator to determine if the person claiming drawback received a waiver of prior notice for the exported merchandise.

(11) *Transportation reference number.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for the cargo being exported.

(12) *Equipment number.* Report the container number for containerized

shipments. This number may be reported in conjunction with the booking number.

(13) *Filing option indicator.* Report the 1-character filing option that indicates Option 2 or 4 filing.

(14) *Directorate of Defense Trade Controls (DDTC) registration number.* The number assigned by DDTC to persons who are required to register per Part 122 of the ITAR (22 CFR, 120–130), that has an authorization (license or exemption) from DDTC to export the article.

(15) *DDTC Significant Military Equipment (SME) indicator.* A term used to designate articles on the USML for which special export controls are warranted because of their capacity for substantial military utility or capability. See § 120.7 of the ITAR 22 CFR, parts 120–130, for a definition of SME and § 121.1 for items designated as SME articles.

(16) *DDTC eligible party certification indicator.* Certification by the U.S. exporter that the exporter is an eligible party to participate in defense trade. See ITAR 22 CFR 120.1(c). This certification is required only when an exemption is claimed.

(17) *DDTC USML category code.* The USML category of the article being exported (22 CFR, part 121).

(18) *DDTC Unit of Measure (UOM).* This unit of measure is the UOM covering the article being shipped as described on the export authorization or declared under an ITAR exemption.

(19) *DDTC quantity.* This quantity is for the article being shipped. The quantity is the total number of units that corresponds to the DDTC Unit of Measure Code.

(20) *DDTC exemption number.* The exemption number is the specific citation from the Code of Federal Regulations (22 CFR, parts 120–130) that exempts the shipment from the requirements for a license or other written authorization from DDTC.

(21) *DDTC export license line number.* The line number of the State Department export license that corresponds to the article being exported.

(22) *Kimberley Process Certificate (KPC) number.* The unique identifying number of the KPC issued by the United States Kimberley Process Authority that must accompany any export shipment

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of rough diamonds. Rough diamonds are classified under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31. Enter the KPC number in the license number field excluding the 2-digit U.S. ISO country code.

(c) *Optional data elements are as follows:*

(1) *Transportation Reference Number for other than vessel shipments.* (i) *Air shipments.* Report the master air waybill for air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the airplane for cargo being exported.

(ii) *Rail shipments.* Report the bill of lading (BOL) number for all rail shipments. The BOL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported.

(iii) *Truck shipments.* Report the Freight or Pro Bill number for all truck shipments. The Freight or Pro Bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The Freight or Pro Bill number correlates to a bill of lading number, air waybill number or Trip number for multi-modal shipments.

(2) *Seal number.* Report the security seal number of the seal placed on the equipment.

[64 FR 40977, July 28, 1999, as amended at 68 FR 42541, July 17, 2003; 68 FR 59879, Oct. 20, 2003; 70 FR 25774, May 16, 2005]

§ 30.64 Transmitting and correcting AES information.

(a) The exporter or their authorized filing agent is responsible for electronically transmitting corrections, cancellations, or amendments to shipment information previously transmitted using the AES. Corrections, cancellations, or amendments should be made as soon as possible after exportation when the error or omission is discovered.

(b) For shipments where the exporter or their authorized filing agent has received an error message from AES, the corrections must take place as required. A fatal error message will cause the shipment to be rejected. This error must be corrected prior to exportation of the merchandise. For shipments where a warning message is received,

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the correction must be made within four (4) working days of receipt of the transmission, otherwise AES will generate a reminder message to the filer. For shipments with a verify message, corrections when warranted, should be made as soon as possible after notification of the error by the AES.

§ 30.65 Annotating the proper exemption legends or proof of filing citations for shipments transmitted electronically.

(a) Items identified on the USML must meet the predeparture reporting requirements identified in the ITAR (22 CFR, part 120-130) for the State Department requirements concerning AES proof of filing citations and time and place of filing.

(b) The USPPI or the authorized agent is responsible for annotating the proper exemption legend or proof of filing citation on the bill of lading, air waybill, or other commercial loading document for presentation to the carrier prior to tendering the cargo to the exporting carrier. The carrier is responsible for transmitting the appropriate exemption legend or proof of filing citation to the CBP Port Director at the port of exportation as stated in § 30.21 and § 30.22 of this part. Such transmittal shall be without material change or amendment of the exemption legend or proof of filing citation as provided to the carrier by the USPPI or the authorized agent. The exemption legend or proof of filing citation will identify that the shipment information has been accepted as transmitted and electronically filed using the AES. The exemption legend or proof of filing citation must appear on the bill of lading, air waybill, or other commercial loading documentation and the manifest and must be clearly visible and include any of the following:

(1) The exemption legend or proof of filing citation will include the statement, "NO SED REQUIRED—AES," followed by the filer's identification number and a unique shipment reference number referred to as the External Transaction Number (XTN) or the returned confirmation number provided by AES when the transmission is accepted, referred to as the Internal Transaction Number (ITN).

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(2) Shipments of USML articles must meet the predeparture reporting requirements in the ITAR (22 CFR parts 120–130).

(3) For shipments of rough diamonds, the proof of filing citation shall include the statement, “NO SED REQUIRED—AES,” followed by the returned confirmation number provided by the AES when the transmission is accepted, referred to as the ITN. The ITN is required to be shown on the Kimberley Process Certificate for all exports (reexports) of rough diamonds to certify that the diamonds have been controlled through the Kimberley Process Certification Scheme, as defined in section 3 of Public Law 108–19 of the Clean Diamond Trade Act and implemented in the Rough Diamonds Control Regulations (31 CFR part 592).

(4) For USPPIs who have been approved to participate in Filing Option 4, the exemption statement, “NO SED REQUIRED—AES4,” followed by the USPPI’s EIN followed by the filer’s identification number if other than the USPPI files the data.

[68 FR 42542, July 17, 2003, as amended at 68 FR 59879, Oct. 20, 2003]

§ 30.66 Support, documentation and recordkeeping requirements.

(a) *Support.* *ASKAES@census.gov* is an online service that allows electronic filers to seek assistance pertaining to AES. *AESDirect* is supported by a help desk available twelve (12) hours a day, seven (7) days a week.

(b) *Documentation.* Filers using the *AESDirect* are able to print out from the *AESDirect* a validated record of the filer’s submission. Filers using AES are able to print records containing date of submission and a unique identification number for each AES record submitted. The Census Bureau will maintain an electronic file of data sent through AES to ensure that an individual is able to receive from the system, a validated record of the submission. The USPPI or the authorized agent of the USPPI or the authorized agent of the foreign principal party in interest may request a copy of the electronic record submitted as provided for in § 30.91 of this part.

(c) *Recordkeeping.* All parties to the export transaction (owners and opera-

tors of the exporting carriers and U.S. principal party and/or the authorized agents) must retain documents or records pertaining to the shipment for five (5) years from the date of export. CBP, the Census Bureau, and other participating agencies may require that these documents be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format, including electronic or hard copy as provided in the applicable agency’s regulations. Acceptance of the documents by CBP or the Census Bureau does not relieve the USPPI or the authorized agent from providing complete and accurate information after the fact. The Department of State or other regulatory agencies may have additional recordkeeping requirements for exports.

[68 FR 42542, July 17, 2003]

Subpart F—General Requirements—Importers

SOURCE: 41 FR 9134, Mar. 3, 1976, unless otherwise noted. Redesignated at 64 FR 40977, July 28, 1999.

§ 30.70 Statistical information required on import entries.

Information for statistics on merchandise entering the United States from foreign countries, U.S. Foreign Trade Zones, and from the Virgin Islands of the United States, and other nonforeign areas (except Puerto Rico), is required to be reported by importers on the following CBP entry and withdrawal forms respectively required by U.S. CBP regulations for individual transactions: Custom Forms 7500, 7501, 7502, 7505, 7506, 7519, 7521, and 7535, and on CBP Form 7512 when used as an intransit entry to document immediate exportation or transportation and exportation. Upon request, the importer or import broker must provide the Census Bureau with information or documentation necessary to verify the accuracy or resolve problems regarding

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the reported import transaction received by the Census Bureau. The following items of information for statistics shall be reported on the respective forms:⁷

(a) *District and port code.* (All forms.) The CBP district code number and the port code number (as shown in Schedule D, *Classification of CBP Districts and Ports*) for the CBP port of entry or filing shall be supplied. (Where CBP does not require that the District and Port codes be inserted by importers, the codes will be filled in by CBP so that all entries and withdrawals received by the Bureau of the Census will bear these codes.)

(b) *Importing vessel or carrier.* (Not required for merchandise entering U.S. CBP territory from U.S. Foreign Trade Zones.) (1) (CBP Forms 7501, 7502, 7512, and 7521.) Information is required as to the carrier or means of transportation by which the merchandise was transported from a foreign country to the first port of unloading in the United States. If the merchandise has been further transported in bond between ports in the United States after having been unladen from the carrier on which it arrived in the United States, the name of the domestic carrier shall not be substituted, and the information furnished shall reflect the name of the carrier or means of transportation by which the merchandise arrived in the first U.S. port of unloading.

(2) For merchandise arriving in the United States by vessel, the name of the importing vessel is required. The importing vessel is the vessel which transported the merchandise from the foreign port of lading to the first U.S. port of unloading.

(3) For merchandise arriving in the United States by air, the name and nationality of the importing airline is required. The importing airline is the airline which carried the merchandise from the foreign port of lading to the first U.S. port of unloading, and not a domestic airline carrying the merchan-

⁷The information required for statistical purposes is in most cases also required by CBP regulations for other purposes. (See § 30.80 for special reporting instructions for merchandise entering United States CBP Territory from United States Foreign Trade Zones.)

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dise after the initial unloading in the United States.

(4) For merchandise arriving in the United States by means of transportation other than vessel or air, the means of transportation from the foreign country is required, in such terms as "parcel post," "registered mail," "railroad," "trucks," "pipeline," etc.

(c) *Foreign port of lading.* (1) (CBP Forms 7501, 7502, 7512 and 7521.) For merchandise arriving in the United States by vessel or air, the name and country of the foreign port at which the merchandise was actually loaded on the vessel or aircraft that carried the merchandise to the United States is required. This information is not required for merchandise entering the U.S. CBP territory from a U.S. Foreign Trade Zone. For shipments originating in either Canada or Mexico by rail, truck, pipeline, or other nonvessel/nonair mode of transportation, supply the name of the province (Canada) or state (Mexico) where the merchandise was first loaded for exportation to the United States.

(2) For merchandise transshipped overseas in the course of shipment to the United States, whether or not covered by a through bill of lading, the information furnished shall reflect only the foreign port at which the merchandise was loaded on the vessel, aircraft, or other carrier which transported it to the first U.S. port of unloading. Neither the foreign port of original lading nor any port of lading other than the last foreign port of lading shall be substituted. When a single CBP form covers merchandise loaded at more than one foreign port, the foreign port of lading shall be indicated separately in the "Marks and numbers and Country of origin" column immediately below the Country of origin designation and on the same line as the merchandise laden at each foreign port.

(3) For merchandise entering the U.S. CBP territory from a U.S. Foreign Trade Zone, the number of the Foreign Trade Zone, preceded by the letters "FTZ" shall be shown in this space.

(d) *U.S. port of unloading.* (Not required for merchandise entering U.S. CBP territory from U.S. Foreign Trade Zones.) (1) (CBP Forms 7501, 7502, 7512, and 7521.) For merchandise arriving in

the United States by vessel or air, the U.S. port (as listed in Schedule D) at which the merchandise was unloaded from the importing vessel or aircraft is required, whether or not such port is a CBP port of entry. (For example, if entry is filed at the Port of Los Angeles for merchandise unloaded from the importing vessel at Long Beach, California, the entry should show Long Beach as the port of unloading.)

(2) When merchandise is transported in bond from the U.S. port where unloaded from the importing vessel or carrier to another U.S. port or ports to be entered for consumption or warehouse, the port of unloading required to be shown on the consumption or warehouse entry is the port or point where the merchandise was unloaded from the importing vessel or carrier before transportation in bond.

(e) *Date of importation.* (All forms.) For merchandise arriving in the United States by vessel, the month, day, and year on which the importing vessel transporting the merchandise from the foreign country arrived within the limits of the U.S. port at which the merchandise was or is to be unladen is required. The date of importation to be reported for merchandise arriving in the United States other than by vessel is the date on which the merchandise arrives within the limits of the United States.

(f) *Country of origin.* (1) (All forms.) Country of origin shall be reported in the "marks and numbers and country of origin" column on entry and withdrawal forms (in the "marks and numbers" column on Forms 7512 and 7500), the "country of origin" space on the Special CBP Invoice form, and in a conspicuous place on commercial invoices supplied to CBP where the Special CBP Invoice form is not required. On multipage entries, country of origin should be shown on each page.

(2) Country of origin shall be reported in terms of the names designated in Schedule C-I, "*Classification of Country and Territory Designations for U.S. Import Statistics*," unless a more specific geographic area is required to be shown for other purposes. The country of origin is defined as the country in which the product was mined, grown or manufactured. Further labor, work

or material added to an article in another foreign country or the Virgin Islands of the United States must effect a substantial transformation in order to render such other country the "country of origin." Such substantial transformations include smelting of ores, refining of crude products, and the like. The country of origin is not changed when the merchandise is subjected in another country merely to minor manipulations, such as sorting, grading, and the like. When the merchandise is invoiced in or exported from a country other than that in which it originated, the actual country of origin shall be specified rather than the country of invoice or exportation. The country of origin for imports of scrap and waste is the country in which the merchandise was reduced to scrap or waste. In the case of such commodities as industrial diamonds or antiques, if the origin of the merchandise is not known or cannot be ascertained with reasonable effort, the country from which the merchandise has been shipped shall be shown and shall be indicated as the "Country of Shipment."

(3) Except as provided below, the country of origin shown on import entries and withdrawals should be based on information furnished by the foreign supplier on import invoices. The importer should inform his foreign supplier of the requirements and definitions of this section and instruct the foreign supplier to furnish information on the invoice as to country of origin in accordance with the above definition. If an invoice from the foreign supplier is not available at the time of entry, the importer shall enter the correct country of origin according to his best knowledge. In any case where the importer has reliable knowledge that the country of origin shown on the invoice is incorrect, he shall enter on the form the correct country of origin according to his best knowledge, indicating that it is a correction.

(4) When a single CBP form covers merchandise from more than one country of origin, the country of origin shall be indicated separately against each item (or group of items).

(g) *Description of merchandise.* (All forms.) Except on CBP Form 7512 when used as an Immediate Exportation or

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Transportation and Exportation entry, the description of merchandise shall be in terms of the Tariff Act in accordance with the Tariff Schedules of the United States Annotated for Statistical Reporting (TSUSA) and in sufficient detail to permit the identification of the TSUSA statistical reporting number to which each commodity properly belongs. The name of the commodity and any and all characteristics of the commodity which distinguish it from commodities of the same name covered by other TSUSA statistical reporting numbers shall be clearly and fully stated. For merchandise classified in TSUSA classifications for which the instruction "specify by name" is shown in TSUSA the specific name of the commodity or a further identifying description in addition to the description in the more general terms of the commodity classification definition is required. When CBP Form 7512 is used as an Immediate Exportation or Transportation and Exportation entry importers need only report in terms of the first five digits of TSUSA (*i.e.*, in terms of TSUS).

(h) *Gross weight in pounds.* (CBP Forms 7501, 7502, 7512, and 7521, for merchandise transported to the United States by vessel or air only.) Gross shipping weight in pounds shall be reported in column (2a) immediately below the description of merchandise (in "Gross Weight in Pounds" column on Form 7512 on the same horizontal line with value). Separate gross weight information is required for the merchandise covered by each reporting number, but if gross weight is not available for each reporting number included in one or more packages, approximate shipping weight for each item shall be estimated and reported. The total of these estimated weights should equal the actual gross shipping weight of the entire package or packages. However, for containerized cargo carried in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers should not be included in the gross shipping weight of the merchandise covered by each reporting number.

(i) *Net quantity.* (All forms except 7535.) When a unit of quantity is specified in TSUSA for the reporting num-

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ber under which the item is reported, net quantity shall be reported in the specified unit, and (except where the unit is "No." (number)) the unit in which reported shall also be shown on the entry following the net quantity figure. In cases where two units of quantity are shown for the commodity in TSUSA, net quantity shall be reported on the import entry in each of the specified units with the unit indicated in each case. The quantity in terms of the unit marked with a superior "v" in TSUSA should be shown on the entry on the same horizontal line with the value. The quantity in terms of any other units specified in TSUSA should be shown below the first quantity and should be enclosed in parentheses. If no unit of quantity is specified in TSUSA for the reporting number under which the item is reported, net quantity is not required to be reported on the import entry, and an "X" shall be entered in the "net quantity" column. Where the unit of quantity specified in TSUSA is "tons," long tons of 2,240 pounds shall be reported unless short tons of 2,000 pounds are specified in TSUSA. Quantities shall be shown in whole units unless fractions of units are required for CBP purposes.

(j) *Value.* (All forms.) Except on CBP Form 7512 when used as an Immediate Exportation or Transportation and Exportation entry, the dollar value shall be reported on the forms in accordance with the definitions set forth in the Tariff Schedules of the United States Annotated (TSUSA) and sections 402 and 402a of the Tariff Act of 1930, as amended. Moreover, the value shall be reported in accordance with the format prescribed in the U.S. CBP Regulations. (On CBP Form 7512 when used as an Immediate Exportation entry, only the CBP value in accordance with sections 402 and 402a of the Tariff Act of 1930, as amended, need be reported.)

(k) *TSUSA reporting number.* (All forms.) Except on CBP Form 7512 when used as an in-transit entry, the reporting number according to the current edition of the Tariff Schedules of the United States Annotated shall be shown in the column provided on the form. The reporting number assigned

shall reflect the correct TSUSA classification of the merchandise and be consistent with the rate of duty applicable to the commodity. Where correct reporting as indicated in TSUSA requires the use of more than one TSUSA commodity number, all required reporting numbers will be shown for an item on the CBP form. On CBP Form 7512 when used as an Immediate Exportation or Transportation and Exportation entry, the reporting number, in terms of the first five digits of TSUSA (TSUS), is required to be shown in the column provided on the form for "Description and Quantity of Merchandise." This code should appear to the right of that column, on the same line as the reported gross weight and value.

[41 FR 9134, Mar. 3, 1976, as amended at 42 FR 59839, Nov. 22, 1977; 47 FR 29829, July 9, 1982; 65 FR 42565, July 10, 2000]

Subpart G—Special Provisions for Particular Types of Import Transactions

SOURCE: 41 FR 9134, Mar. 3, 1976, unless otherwise noted. Redesignated at 64 FR 40977, July 28, 1999.

§ 30.80 Imports from Canada.

(a) When certain softwood lumber products described under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020 are imported from Canada, import entry records are required to show a valid Canadian Province of Manufacture Code. The Canadian Province of Manufacture is determined on a first mill basis (the point at which the item was first manufactured into a covered lumber product). For purposes of determination, Province of Manufacture is the first province where the subject merchandise underwent a change in tariff classification to the tariff classes cited in this paragraph (a). The Province of Manufacture Code should replace the Country of Origin code on the CF 7501, Entry Summary form. For electronic Automated Broker Interface (ABI) entry summaries, the Canadian Province Code should be transmitted in positions 6-7 of the A40 records. These requirements apply only for imports of

certain softwood lumber products for which the Country of Origin is Canada.

(b) All other imports from Canada, including certain softwood lumber products not covered in paragraph (a) of this section, will require the two-letter designation of the Canadian Province of Origin to be reported on U.S. entry summary records. This information is required only for United States imports that under applicable CBP rules of origin are determined to originate in Canada. For nonmanufactured goods determined to be of Canadian origin, the Province of Origin is defined as the Province where the exported goods were originally grown, mined, or otherwise produced. For goods of Canadian origin that are manufactured or assembled in Canada, with the exception of the certain softwood lumber products described in paragraph (a) of this section, the Province of Origin is that in which the final manufacture or assembly is performed prior to exporting that good to the United States. In cases where the province in which the merchandise was manufactured or assembled or grown, mined, or otherwise produced is unknown, the province in which the Canadian vendor is located can be reported. For those reporting on paper forms the Province of Origin code replaces the country of origin code on the CF 7501, Entry Summary form.

(c) All electronic Automated Broker Interface (ABI) entry summaries for imports originating in Canada also require the new Canadian Province of Origin code to be transmitted for each entry summary line item in the A40 record positions 6-7.

(d) The Province of Origin code replaces the Country of Origin code only for imports that have been determined, under applicable CBP rules, to originate in Canada. Valid Canadian Province/Territory codes are:

XA—Alberta
 XB—New Brunswick
 XC—British Columbia
 XM—Manitoba
 XN—Nova Scotia
 XO—Ontario
 XP—Prince Edward Island
 XQ—Quebec
 XS—Saskatchewan
 XT—Northwest Territories
 XV—Nunavut

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XW—Newfoundland
XY—Yukon

[61 FR 60532, Nov. 29, 1996; 61 FR 65319, Dec. 12, 1996, as amended at 64 FR 24943, May 10, 1999]

§ 30.81 Imports of merchandise into Guam.

(a) Carriers of merchandise to Guam shall not be permitted to unload cargo in Guam until the master or other person in charge of the carrier shall deliver to the Government of Guam at the place of unloading a manifest, cargo list, freight list or equivalent document showing a detailed account of merchandise destined for Guam on board such carrier, with the numbers and description of the packages according to their usual name or designation.

(b) For each shipment imported into Guam except as listed in paragraph (d) of this section, the importer in Guam shall furnish to the Government of Guam at the port of entry of the merchandise at the time of or prior to taking possession of such merchandise, the commercial invoice covering the shipment attached to a copy of the bill of lading or air waybill signed by the carrier. (Where the shipment is one for which no bill of lading (or air waybill) is utilized only a copy of the commercial invoice need be furnished.) In individual cases, where warranted in the opinion of the Government of Guam, the Government of Guam may release merchandise to the consignee prior to receipt of the commercial invoice and/or bill of lading or air waybill in the case of perishable articles or other merchandise, the immediate delivery of which is necessary.

(c) Information concerning individual transactions furnished to the Government of Guam pursuant to these regulations may not be disclosed by those having possession of or access to any copies of such information for official purposes, to anyone other than the exporter or importer except as specifically directed by the Bureau of the Census.

(d) The following kinds of shipments are not to be included in the statistics on shipments from the United States to Guam and the documentation prescribed in paragraphs (a) and (b) of this

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section shall not be required for statistical purposes:

(1) Shipments to the U.S. Armed Forces;

(2) Shipments of office furniture, office equipment, and office supplies, to and for the exclusive use of U.S. Government offices;

(3) Baggage and personal effects, accompanied or unaccompanied, of persons leaving the U.S., and tools of trade, as described in §30.56(a) and (b).

§ 30.82 Identification of U.S. merchandise returned for repair and reexport.

Import entries covering U.S. merchandise imported temporarily for repair or alteration and reexport are required to show the following statement: "Imported for Repair and Reexport."

§ 30.83 Statistical copy of mail and informal entries.

A legible copy of all mail and informal entries is required for statistical purposes. In addition to the information required to be shown for customs purposes, the value is also required to be shown for all merchandise including that not subject to duty.

Subpart H—General Administrative Provisions

SOURCE: 41 FR 9134, Mar. 3, 1976, unless otherwise noted. Redesignated at 64 FR 40977, July 28, 1999.

§ 30.90 Confidential information, import entries and withdrawals.

The contents of the statistical copies of import entries and withdrawals on file with the Bureau of the Census are treated as confidential and will not be released without authorization by the Bureau of Customs and Border Protection, in accordance with the policy set forth in 19 CFR 103.4 (CBP Regulations) relating to the copies on file in CBP offices.

§ 30.91 Confidential information, Shipper's Export Declarations.

(a) *Confidential status.* The Shipper's Export Declaration is an official Department of Commerce form, prescribed jointly by the Bureau of the

Census and the Bureau of Industry and Security. Information required thereon is confidential, whether filed electronically or in any other approved format, for use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. Information required on the Shipper's Export Declarations may not be disclosed to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes, except as provided in paragraph (e) of this section.

(b) *Copying of information to manifests not permitted.* Since certain types of information from the outward manifests of ocean carriers can be made public under the provisions of the CBP Regulations, carriers are not permitted to copy information to manifests (or to bills of lading used in lieu of a listing of cargo on a manifest) from Shipper's Export Declarations in their possession for official purposes, except for (1) the bill of lading number on the declaration, (2) information on the declaration which is identical with bills of lading or other sources of information available to the carrier, and (3) items of information which are required by Export Administration Regulations to be identical or consistent on both documents.

(c) *Supplying of copies by exporters for unofficial purposes not permitted.* The regulations in this part spell out precise definitions to be followed in reporting information on Shipper's Export Declarations. Strict adherence to these definitions is necessary if the official purposes for which the forms are required are to be effectively accomplished. Because of the possibility that for other purposes different definitions would be appropriate, the supplying by exporters of any copies (or of the information from copies) for any unofficial purpose is considered detrimental to official objectives and is not permitted.

(d) *Limitations on issuance and reproduction of copies.* Consistent with the policy stated in paragraph (c) of this section, and with the confidential status of the document generally, the following limitations are placed upon the issuance of copies to exporters or their agents:

(1) A copy of a Shipper's Export Declaration may be supplied to exporters or their agents only when such a copy is needed by the exporter to comply with: (i) Official requirements for presentation of a copy to the exporting carrier as authorization for export, (ii) export control requirements, or (iii) U.S. Department of Agriculture requirements for proof of export in connection with subsidy payments. Copies issued to exporters or their agents under paragraph (d)(1) (ii) or (iii) of this section will be stamped as follows by the CBP Director:

Certified pursuant to the Export Administration Regulations or to fulfill the requirements of a Federal Agency and not for any other purpose. May not be reproduced in any form.

(2) Use of copies of the Shipper's Export Declaration in connection with claims for exemption from internal revenue taxes or state taxes is not permitted.

(e) *Determination by the Secretary of Commerce.* When the Secretary of Commerce or delegate determines that the withholding of information provided by an individual Shipper's Export Declaration is contrary to the national interest, the Secretary or delegate may make such information available, taking such safeguards and precautions to limit dissemination as deemed appropriate under the circumstances. In recommendations regarding such actions, the Bureau of the Census will, in general, consider that it is not contrary to the national interest to withhold information on Shipper's Export Declarations from private individuals or businesses (except the exporter or the agent of the exporter) or from state or local government agencies or officials, regardless of the purposes for which the information may be requested. In recommendations regarding any other requests for access to official copies, a judgment in the light of circumstances will be made as to whether it is contrary to the national interest to apply the exemption, keeping in view that the maintenance of confidentiality has

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in itself an important element of national interest.

(13 U.S.C.302; and 5 U.S.C. 301; Reorg. Plan No. 5 of 1950, Department of Commerce Organization Order No. 35-2A, August 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 47 FR 7213, Feb. 18, 1982; 48 FR 52701, Nov. 22, 1983; 64 FR 40981, July 28, 1999]

§ 30.92 Statistical classification schedules.

The following statistical classification schedules referred to in the regulations in this part are hereby incorporated by reference. Information as to where copies may be obtained is indicated. Copies are available for public inspection at the offices of local CBP Directors and Department of Commerce District Offices.

TSUSA—Tariff Schedules of the United States Annotated for Statistical Reporting, as currently revised, shows the 7-digit statistical reporting number to be used in preparing import entries and withdrawal forms. TSUSA may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, local CBP Directors, or Department of Commerce District Offices located in principal cities. Purchase price includes the basic schedule plus revisions as currently issued for an indefinite period.

Schedule B—Statistical Classification of Domestic and Foreign Commodities Exported from the United States, as currently revised, shows the detailed commodity classification requirements and 7-digit statistical reporting numbers to be used in preparing Shipper's Export Declarations, as required by these regulations. Schedule B may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, local CBP Directors, or Department of Commerce District Offices located in principal cities. Purchase price includes the basic schedules and supplements issued irregularly, covering revision in the schedule for an indefinite period.

Schedule C-E—Classification of Country and Territory Designations for U.S. Export Statistics. Free from the Bureau of the Census, Washington, D.C. 20233.

Schedule C-I—Classification of Country and Territory Designations for U.S. Import Statistics. Free from the Bureau of the Census, Washington, D.C. 20233.

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Schedule D—Classification of CBP Districts and Ports. Free from the Bureau of the Census, Washington, D.C. 20233.

(13 U.S.C. 302; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35-2A, Aug. 4, 1975, 40 FR 42765)

[41 FR 9134, Mar. 3, 1976, as amended at 42 FR 59840, Nov. 22, 1977; 43 FR 56031, Nov. 30, 1978; 44 FR 1971, Jan. 9, 1979]

§ 30.93 Emergency exceptions.

In individual cases of emergency, where strict enforcement of the regulations in this part would create undue hardship, the Foreign Trade Division of the Bureau of the Census, with the concurrence of the Office of Export Administration in cases where export control requirements are also involved, may authorize such postponements of or exceptions to the requirements of the regulation in this part as are warranted by the circumstances and not inconsistent with the aims of this chapter.

§ 30.94 Instructions to CBP.

Instructions of a continuing nature to CBP with respect to the forwarding of statistical copies of forms and the preparation of special statistical reports not involving requirements upon the public will not be included in the regulations in this part, but will, instead be transmitted to CBP through appropriate administrative channels.

§ 30.95 Penalties for violations.

(a) *Exports (reexports) of rough diamonds*. The Clean Diamond Trade Act, section 8(c), authorizes the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (BICE), as appropriate, to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the exporting authority. The Treasury Department's Office of Foreign Assets Control (OFAC) also has enforcement authority pursuant to section 5(a) of the Clean Diamond Trade Act (the Act), Executive Order 13312, and the Rough Diamonds Control Regulations (31 CFR part 592). The CBP, the BICE, and OFAC, pursuant to

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section 5(a) of the Act, are further authorized to enforce provisions of section 8(a) of the Act that provide for the following civil and criminal penalties:

(1) A civil penalty not to exceed \$10,000 may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act.

(2) A criminal penalty not to exceed \$50,000, or;

(i) If a natural person, imprisonment for not more than 10 years, or both, may be imposed for willful violation of any license, order, or regulation issued under the Act.

(ii) If a corporation, imprisonment for not more than 10 years, or both may be imposed on any officer, director, or agent of the corporation for willful violation of any license, order, or regulation issued under the Act.

(b) *Exports of other than rough diamonds.* Any person who violates any provisions of this part, except for violations of the provisions relating to delayed filing of documents under bond as provided by §30.24 and violations of section 8 of Public Law 108-19, the Clean Diamond Trade Act, shall be liable to the United States in an amount not exceeding \$1,000 for each violation, as authorized by section 305, chapter 9, title 13 U.S.C.

[68 FR 59879, Oct. 20, 2003]

§ 30.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart will comply with the requirements of section 3507(f) of the Paperwork Reduction Act (PRA) which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control no.
30.1 through 30.7	0607-0001, -0018, -0150, -0152
30.8	0607-0001
30.9 through 30.11	0607-0001, -0018, -0152
30.12 and 30.15	0607-0001, -0018, -0152
30.16	0607-0001, -0018, -0150, -0152
30.20 through 30.24	0607-0001, -0018, -0150, -0152
30.30 through 30.31	0607-0018, -0150, -0152
30.33 through 30.35 and 30.37.	0607-0001, -0018, -0150, -0152
30.39	0607-0018, -0150, -0152
30.40, 30.41, and 30.50 through 30.53.	0607-0001, -0018, -0150, -0152

15 CFR section where identified and described	Current OMB control no.
30.54	0607-0018
30.55 through 30.57	0607-0001, -0018, -0150, -0152
30.82	0607-0018, -0152
30.91 through 30.95	0607-0001, -0018, -0150, -0152

[48 FR 56744, Dec. 23, 1983]

APPENDIX A TO PART 30—FORMAT FOR LETTER OF INTENT, AUTOMATED EXPORT SYSTEM (AES)

The first requirement for participation in AES is a Letter of Intent. The Letter of Intent is a written statement of a company's desire to participate in the AES. It must set forth a commitment to develop, maintain, and adhere to CBP and Census performance requirements and operations standards. Once the letter of intent is received, a CBP Client Representative and U.S. Census Bureau Client Representative will be assigned to the company. Census will forward additional information to prepare the company for participation in AES.

A. Letters of Intent should be on company letterhead and must include:

1. Company Name, Address (no P.O. Boxes), City, State, Postal Code
2. Company Contact Person, Phone Number, Fax Number, E-mail Address
3. Technical Contact Person, Phone Number, Fax Number, E-mail Address
4. Corporate Office Address, City, State, Postal Code
5. Computer Site Location Address, City, State, Postal Code (Where transmissions will be initiated)
6. Type of Business—USPPI, Freight Forwarder/Broker, Ocean Carrier, Software Vendor, Service Center, etc. (Indicate all that apply)
 - (i) Freight Forwarders/Brokers, indicate the number of USPPIs for whom you file export information (SEDs)
 - (ii) USPPIs, indicate whether you are applying for AES Option 2 or Option 4
7. U.S. Ports of Export Currently Utilized
8. Average Monthly Volume of Export Shipments (Monthly SED volume)
9. Average Monthly Value of Export Shipments (Monthly SED volume)
10. Filer Code—EIN, SSN or SCAC (Indicate all that apply)
11. Software Vendor Name, Contact, and Phone Number (if using vendor provided software)
12. Look-a-Like Remote to Copy (as provided by vendor)
13. Modes of Transportation used for export shipments (Air, Vessel, Truck, Rail, etc.)
14. Types of Merchandise exported
15. Types of Licenses or Permits
16. Anticipated Implementation Date

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B. The following self-certification statement, signed by an officer of the company, must be included in your letter of intent: "We (COMPANY NAME) certify that all statements made and all information provided herein are true and correct. I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information or for violation of U.S. laws on exportation (13 U.S.C. 305; 22 U.S.C. 401; 18 U.S.C. 1001; 50 U.S.C. App. 2410)."

C. The AES Option 4 privilege allows a USPPI to submit complete data at any time prior to or after exportation provided complete data are submitted within 10 working days after exportation. Participants will be reviewed by several government agencies prior to acceptance into the Option 4 program.

D. Send AES or Option 4 Letter of Intent to: Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233 or the copy can be faxed to: 301-457-1159.

[64 FR 40981, July 28, 1999, as amended at 68 FR 42543, July 17, 2003]

APPENDIX B TO PART 30 [RESERVED]

APPENDIX C TO PART 30—ELECTRONIC (AES) FILING CODES

Part I—Method of Transportation Codes

- 10 Sea
- 11 Sea Containerized
- 12 Sea (Barge)
- 20 Rail
- 21 Rail Containerized
- 30 Truck
- 31 Truck Containerized
- 32 Auto
- 33 Pedestrian
- 34 Road, Other
- 40 Air
- 41 Air Containerized
- 50 Mail
- 60 Passenger, Hand Carried
- 70 Fixed Transport (Pipeline and Powerhouse)

Part II—Export Information Codes

- LC Shipments valued \$2,500 or less per classification number that are required to be reported
- TP Temporary exports of domestic merchandise
- IP Shipments of merchandise imported under a Temporary Import Bond for further manufacturing or processing
- IR Shipments of merchandise imported under a Temporary Import Bond for repair
- DB Drawback
- CH Shipments of goods donated for charity
- FS Foreign Military Sales

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- OS All other exports
- HV Shipments of personally owned vehicles
- HH Household and personal effects
- SR Ship's stores
- TE Temporary exports to be returned to the United States
- TL Merchandise leased for less than a year
- IS Shipments of merchandise imported under a Temporary Import Bond for return in the same condition
- CR Shipments moving under a carnet
- GP U.S. government shipments
- LV Shipments valued \$2,500 or less that are not required to be reported
- SS Carriers' stores for use on the carrier
- MS Shipments consigned to the U.S. Armed Forces
- GS Shipments to U.S. government agencies for their use
- DP Diplomatic pouches
- HR Human remains
- UG Gift parcels under Bureau of Industry and Security License Exception GFT
- IC Interplant correspondence
- SC Instruments of international trade
- DD Other exemptions:
 - Currency
 - Airline tickets
 - Bank notes
 - Internal revenue stamps
 - State liquor stamps
 - Advertising literature
 - Shipments of temporary imports by foreign entities for their use
- RJ Inadmissible merchandise
(For Manifest Use Only by AES Carriers)
- RP Shipment information filed through Census Bureau's AERP
- AE Shipment information filed through AES
- ZD Duty deferred shipments filed via AES
- FI Impelled foreign military sales
- CI Impelled goods donated for charity
- OI All other impelled exports
(See §§ 30.50 through 30.58 for information on filing exemptions.)

Part III—License Codes

- Department of Commerce, Bureau of Industry and Security (BIS) Licenses
- C30 BIS Licenses
 - C31 SCL
 - C32 NLR (CCL/NS Column 2)
 - C33 NLR (All Others)
 - C34 Future Use
 - C35 LVS
 - C36 GBS
 - C37 CIV
 - C38 TSR
 - C39 CTP
 - C40 TMP
 - C41 RPL
 - C42 GOV
 - C43 GFT
 - C44 TSU

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C45 BAG
C46 AVS
C47 APR
C48 KMI
C49 TAPS
C50 ENC
C51 AGR

Nuclear Regulatory Commission (NRC) Codes

N01 NRC Form 250/250A
N02 NRC General License

Department of State, Directorate of Defense Trade Controls (DDTC) Codes

SAG Agreements
S00 License Exemption Citation
S05 DSP-5
S61 DSP-61
S73 DSP-73
S85 DSP-85
S94 DSP-94

Department of Treasury, Office of Foreign Assets Control (OFAC) Codes

T10 OFAC Specific License
T11 OFAC General License

Other License Types

OPA Other Partnership Agency Licenses
not listed above
SCA Canadian ITAR Exemption

For export license exemptions under International Traffic in Arms Regulations, refer to 22 CFR, Parts 120-130 of the ITAR for the list of export license exemptions.

Part IV—In-Bond Codes

70 Not-In-Bond
36 Warehouse Withdrawal for Immediate
Exportation
37 Warehouse Withdrawal for Transporta-
tion and Exportation
67 Immediate Exportation from a Foreign
Trade Zone
68 Transportation and Exportation from a
Foreign Trade Zone

[64 FR 40982, July 28, 1999, as amended at 68
FR 42543, July 17, 2003]

PART 40—TRAINING OF FOREIGN PARTICIPANTS IN CENSUS PRO- CEDURES AND GENERAL STATIS- TICS

Sec.
40.1 Type of grant.
40.2 Qualifications.
40.3 Cooperation with bilateral technical as-
sistance programs of the United States.
40.4 Administrative provisions on selection
of participants and funding of costs.
40.5 Other cooperative arrangements.

AUTHORITY: 5 U.S.C. 301; 22 U.S.C. 1456; 31
U.S.C. 686. Memorandum of Agreement be-
tween the Department of Commerce and the
Foreign Operations Administration Con-
cerning Foreign Technical Assistance Work,
signed June 10, 1954.

SOURCE: 28 FR 119, Jan. 4, 1963, unless oth-
erwise noted.

§ 40.1 Type of grant.

Training grants will be awarded by
the Agency for International Develop-
ment (AID), in its capacity as the bi-
lateral technical assistance agency for
the United States Government, to for-
eign participants for training, observa-
tion, and research in the fields of cen-
suses and statistics at the Bureau of
the Census. In compliance with the
needs of the participants and con-
sistent with resources of the Bureau,
training programs will be developed
along the lines of a combined interne-
training and/or training-in research
types, and may include any or all of
the following:

(a) Conference courses designed to
provide the trainee with adequate
background information on (1) organi-
zation and administration of the
United States Bureau of the Census, (2)
subject-matter areas for which the Bu-
reau of the Census collects and com-
piles statistical information, (3) nature
and scope of the major statistical pro-
grams maintained by other federal gov-
ernment agencies, (4) techniques and
scope of the periodic censuses and sta-
tistical surveys, and statistical com-
pilations undertaken by the Bureau of
the Census, and (5) relation of censuses
to other statistical data collected and
analyzed by U.S. agencies.

(b) Seminars laboratory exercises and
observation of work in the Census Bu-
reau and other agencies with specific
applicability to the participant such as
(1) development of census and survey
questionnaires, (2) methods of field and
mail enumeration, (3) procedures for
editing and coding statistical forms, (4)
use of office machines,
electromechanical tabulation equip-
ment, and automatic data processing
systems for mass processing of statisti-
cal data, (5) definitions and scope of
the subject matters involved in the
censuses and statistical programs of

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the Bureau of the Census, (6) classification of industrial and business establishments, (7) classification of imports and exports, (8) techniques of making intercensal estimates of population, (9) sampling techniques and quality control procedures, (10) analyses and publication of data, and development of certain indexes; and (11) other topics, particularly in the development of new statistical programs and techniques.

(c) Formal courses at a college or university to supplement the seminars, conference-courses, and individual statistical projects developed, presented, or assigned by the Bureau; or enrolled on a full-time basis in a college or university to obtain the appropriate academic background for further work in the field of statistics in accordance with needs of participants and/or the program requirements of their countries.

(d) Observation trips to various academic institutions with recognized statistical activities, to private marketing and research agencies, to regional field offices of the Bureau, to the government statistical agencies of Canada, and to such activities that will supplement or illustrate the application and end use of statistical data.

(e) Case study workshops on selected census and statistical activities presented at the Bureau, in other locations in the United States, or outside the continental limits of the United States.

(f) Such field training, special research, or university program as appears advisable to the Director of the Bureau of the Census in accordance with the technical needs of the participants.

§ 40.2 Qualifications.

(a) To be eligible for a training grant at the Bureau of the Census the applicant must be:

(1) A bona-fide citizen of a country with whom the United States has proper diplomatic arrangements for such training programs.

(2) Able to speak, read, write, and understand the English language.

(3) Sponsored by his government either directly with the United States or through a public international agency.

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(4) Physically able to undertake the activities incident to the course of training and free from communicable diseases.

(b) [Reserved]

§ 40.3 Cooperation with bilateral technical assistance programs of the United States.

In compliance with the provisions contained in the Memorandum of Agreement executed between the Department of Commerce and the Foreign Operations Administration (now AID) on June 10, 1954, the Bureau of the Census is authorized within its areas of competence and available resources to continue its training of foreign nationals under the general guidance of the Department of Commerce and in cooperation with the bilateral technical assistance programs of the United States Government.

§ 40.4 Administrative provisions on selection of participants and funding of costs.

(a) Within the framework of the aforementioned Memorandum of Agreement, the Bureau of the Census will arrange at the request and expense of the Agency for International Development, a program for technical training of foreign participants in censuses and statistics. The Bureau of the Census will be furnished biographic materials, information about the training objectives including, where appropriate, each participant's education and experience, type of training desired, present and future positions with descriptions of duties, and the terms of the training project for each participant or group as far in advance of his arrival in the United States as possible.

(b) The Bureau reserves the right to accept, based on biographical information to be furnished in advance, only those participants whom it finds qualified to make satisfactory use of its training facilities and resources. The Bureau would prefer to develop programs for foreign participants with substantive experience in the statistical activities of their home country.

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(c) Arrangements for security clearances, insurance, orientation, international travel, housing, and other administrative responsibilities will be the responsibility of AID under the provisions of the Memorandum of Agreement (Reference: Appendix II, Training of Foreign Nationals).

§ 40.5 Other cooperative arrangements.

The Bureau of the Census also undertakes the training of foreign nationals proposed through the Department of State under the International Exchange Service (IES) or under the sponsorship of public international agencies.

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

Sec.

- 50.1 General.
- 50.5 Fee structure for age search and citizenship information.
- 50.10 Fee structure for special population censuses.
- 50.30 Fee structure for foreign trade and shipping statistics.
- 50.40 Fee structure for statistics for city blocks in the 1980 Census of Population and Housing.
- 50.50 Request for certification.
- 50.60 Request for certification.

AUTHORITY: 15 U.S.C. 1525-1527 and 13 U.S.C. 3 and 8.

§ 50.1 General.

(a) Fee structure for age search and citizenship service, special population censuses, and for foreign trade and shipping statistics.

(b) In accordance with the provisions of the acts authorizing the Department of Commerce to make special statistical surveys and studies, and to perform other specified services upon the payment of the cost thereof, the following fee structure is hereby established. No transcript of any record will be furnished under authority of these acts which would violate existing or future acts requiring that information furnished be held confidential.

(c) Requests for age search and citizenship service should be addressed to the Personal Census Search Unit, Data Preparation Division, Bureau of the

Census, P.O. Box 1545, Jeffersonville, Indiana 47131. Application forms may be obtained at Department of Commerce field offices or Social Security offices or by writing to the Jeffersonville, Indiana office.

(d) If a search is unsuccessful and additional information for a further search is requested by the Census Bureau, such information must be received within 90 days of the request or the case will be considered closed. Additional information received after 90 days must be accompanied by a new fee and will be considered a new request.

(15 U.S.C. 1526 and 13 U.S.C. 8)

[36 FR 905, Jan. 20, 1971, as amended at 49 FR 3980, Feb. 1, 1984; 56 FR 35815, July 29, 1991; 68 FR 42586, July 18, 2003]

§ 50.5 Fee structure for age search and citizenship information.

Type of service	Fee
Searches of one census for one person and one transcript	\$65.00
Each additional copy of census transcript	2.00
¹ Each full schedule requested	10.00

¹ The \$10.00 for each full schedule requested is in addition to the \$65.00 transcript fee.

NOTE: An additional charge of \$20.00 per case is charged for expedited requests requiring search results within one day.

[69 FR 45580, July 30, 2004]

§ 50.10 Fee structure for special population censuses.

The Bureau of the Census is authorized to conduct special population censuses at the request of and at the expense of the community concerned. To obtain a special population census, an authorized official of the community should write a letter to the Associate Director for Demographic Fields, Bureau of the Census, Washington, D.C. 20233, requesting detailed information and stating the approximate present population. The Associate Director will reply giving an estimate of the cost and other pertinent information. Title 13, United State Code, section 196, Special Censuses, requires payment to the Bureau of the actual or estimated cost of each such special census.

[47 FR 18, Jan. 4, 1982]

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§ 50.30 Fee structure for foreign trade and shipping statistics.

(a) The Bureau of the Census is willing to furnish on a cost basis foreign trade and shipping statistics provided there is no serious interruption of the Bureau's regular work program.

(b) In instances where information requested is not shown separately or not summarized in the form desired, it is necessary to conduct a preliminary investigation at the requestor's expense to determine whether the information can be compiled from the basic records and what the total cost will be. The preliminary investigation normally costs \$250 but may be more depending on the circumstances. The total cost of the final report generally ranges from \$500 to several thousand dollars for data covering a 12-month period.

(c) Upon receipt of a request, information will be furnished as to whether the statistics are available and if so, the cost; or that a preliminary investigation must be conducted. When an investigation is completed, information will be furnished as to the cost of preparing the material, or as to the reason if the statistics cannot be compiled from our basic records.

(15 U.S.C. 1526 and 13 U.S.C. 8)

[28 FR 120, Jan. 4, 1963, as amended at 49 FR 3980, Feb. 1, 1984]

§ 50.40 Fee structure for statistics for city blocks in the 1980 Census of Population and Housing.

(a) As part of the regular program of the 1980 census, the Census Bureau will publish printed reports containing certain summary population and housing statistics for each city block, drawn from the subjects which are being covered on a 100-percent basis. For these subjects, a substantial amount of additional data by block will be available on computer tape.

(b) The 1980 block data under the regular program will be prepared for:

(1) Each urbanized area in the United States. An urbanized area is delineated by the Census Bureau in each standard metropolitan statistical area and generally consists of a city or group of contiguous cities with a 1970 population of 50,000 or more, together with adjacent densely populated land (*i.e.*,

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land having a population density of at least 1,000 persons per square mile).

(2) And, outside urbanized areas, for each incorporated place (such as a city or village) that was reported as having 10,000 or more inhabitants in:

(i) The 1970 census, or

(ii) The 1973, 1975, or 1976 official population estimates published by the Bureau, or

(iii) A special census conducted by the Bureau on or before December 31, 1977.

(c) Outside the above-mentioned urbanized areas and places, State and local government authorities will be able to contract with the Bureau of the Census to produce block data for their areas. In undertaking this contract, the requesting authority will be required to pay a fee, supply certain maps, and meet certain time deadlines as follows:

(1) *Fee:* (i) Population size:

	Fee per area
Under 2,500	\$500
2,500 to 4,999	600
5,000 to 9,999	700

(ii) The final fee will be based upon the 1980 census population counts. A refund or additional charge will be made if the contracting area is in a different population size group as a result of the census.

(iii) The cost for an area with a population of 10,000 or more will be determined on an individual basis.

(iv) Multiple area contracts may be negotiated at a savings.

(v) The fee is based on estimated 1980 costs. If the 1980 cost exceeds the estimated cost, an additional fee may be requested from the contracting area. If actual costs are less than the estimated cost, a refund may be made.

(vi) Any incorporated place which contracts for block statistics and which reaches a population of 10,000 or more in the 1980 census will have the fee completely refunded, as the place will then be considered to be part of the regular block statistics program.

(vii) If the area submits maps which are not adequate for the Bureau's purposes (see Maps, below) and therefore have to be redrafted by the Bureau, a

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surcharge of \$300 per map sheet requiring revision will be applied to the fee for the particular area.

(2) *Maps:* (i) In order for the Bureau to provide data on a block-by-block basis, it must have a map which clearly delineates each block. The contracting government authority must supply such maps. A copy of the specifications for preparing the block maps will be provided upon request and, in any event, will accompany the copy of the contract which is sent to the government authority for signature.

(ii) The maps must be furnished to the Census Bureau within 30 calendar days after the government authority signs the contract.

(iii) The Bureau will review the maps and, if revision is necessary, return them within 30 calendar days to the government authority.

(iv) Within 30 calendar days thereafter, the revised maps must be transmitted to the Bureau and, if they are still inadequate and must therefore be redrafted by the Bureau, the above-mentioned surcharge of \$300 per map sheet requiring revision will be imposed.

(3) *Timing:* (i) The contract must be signed, and a downpayment of \$250 per area made, by April 1, 1978. A check or money order should be made payable to "Commerce—Census."

(ii) If an area decides to withdraw after signing a contract and making a downpayment, the cost of work performed to date will be deducted from the refund.

(iii) The balance of the fee must be mailed to the Bureau by January 1, 1980.

(d) In consideration of the fees paid and maps supplied, the Bureau will:

(1) Identify the individual blocks in its records and tabulations.

(2) Make available the block data for the particular area in the same manner as for areas in the regular block statistics program (*i.e.*, both in terms of printed reports and computer summary tapes). Two copies of the printed report (including the printed maps) which contain the block statistics for the particular area will be furnished to the contracting government authority.

(e) Requests for participation in the contract block statistics program or

for further information should be addressed to the Director, Bureau of the Census, Washington, DC 20233.

[43 FR 3903, Jan. 30, 1978; 43 FR 59835, Dec. 22, 1978]

§ 50.50 Request for certification.

(a) Upon request, the Census Bureau certifies certain statistical materials (such as the population and housing unit counts of government entities, published tabulations, maps, and other documents). The Census Bureau charges customers a preset fee for this service according to the kind of certification requested (either an impressed document or an attestation) and the level of difficulty involved in compiling it (easy, moderate, or difficult, determined according to the resources expended) as well as the set cost of the data product (e.g., report or map) to be certified. Certification prices are shown in the following table:

PRICE BY TYPE OF CERTIFICATION

Product	Estimated price	Estimated time to complete (in hours)
Impress-easy	\$70.00	1.5
Impress-medium	110.00	3
Impress-difficult	150.00	4.5
Attestation-easy	160.00	3
Attestation-medium	200.00	4.5
Attestation-difficult	240.00	6

(b) There are two forms of certification available: Impressed Documents and Attestation.

(1) *Impressed Documents.* An impressed document is one that is certified by impressing the Census Bureau seal on the document itself. The Census Bureau act, Title 13, United States Code, Section 3, provides that the seal of the Census Bureau shall be affixed to all documents authenticated by the Census Bureau and that judicial notice shall be taken of the seal. This process attests that the document on which the seal is impressed is a true and accurate copy of a Census Bureau record.

(2) *Attestation.* Attestation is a more formal process of certification. It consists of a signed statement by a Census Bureau official that the document is authentic and produced or published by

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the agency, followed by a signed statement of another Census Bureau official witnessing the authority of the first.

(c) Requests for certification should be submitted on Form BC-1868(EF), Request for Official Certification, to the Census Bureau by fax, (301) 457-4714 or by e-mail, *webmaster@census.gov*. Form BC-1868(EF) is available on the Census Bureau's Web site at: *http://www.census.gov/mso/www/certification/*. A letter request—without Form BC-1868(EF)—will be accepted only if it contains the information necessary to complete a Form BC-1868(EF). No certification request will be processed without payment of the required fee.

[67 FR 54951, Aug. 27, 2002]

§ 50.60 Request for certification.

(a) *Certification Process.* Upon request, the Census Bureau certifies population and housing counts of standard governmental units to reflect boundary updates, including new incorporations, annexations, mergers, and so forth. The Census Bureau will produce a certificate, that is, a signed statement by a Census Bureau official attesting to the authenticity of the certified Census 2000 population and housing counts to reflect updates to the legal boundaries of governmental units after those in effect for Census 2000. This service will be a permanent process, but one that will be temporarily suspended during future decennial censuses. Typically, the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the FEDERAL REGISTER announcing when it suspends and, in turn, resumes, the service.

(1) The Census Bureau charges customers a preset fee for this service according to the amount of work involved in compiling the population and housing counts, as determined by the resources expended to meet customer requirements and the set cost of the product (one certificate). Certification fees may increase somewhat if the customer requests additional original certificates. Each additional certificate

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costs \$35.00. Certification prices are shown in the following table:

DESCRIPTION AND ESTIMATED FEE	
Standard governmental units	Estimated fee
Annual Certification	\$693 to \$1,799.
Expedited Certification	1,530 to 9,075.

(2) [Reserved]

(b) *Description of Certification Types.* The Census Bureau will process requests for population certificates for standard governmental units, in accordance with the Census Bureau's annual certification schedule or under an expedited certification arrangement. The boundaries for standard governmental units are regularly and customarily updated between decennial censuses by the Census Bureau's geographic support system. These governmental units include a variety of legally defined general- and special-purpose governmental units, including counties and statistically equivalent entities, minor civil divisions, incorporated places, consolidated cities, federally recognized American Indian reservations, and school districts. A complete list of entities is defined in paragraph (c) of this section.

(1) *Annual Certification.* Annual population and housing certification is available around October 1 of each calendar year to new or existing governmental units that report legal boundary updates in the Census Bureau's annual Boundary and Annexation Survey. In accordance with reporting requirements of this survey, the legally effective dates of the boundary updates may not be later than January 1 of the calendar year. These certifications are available through September of the following year.

(i) The annual certification service also is available to standard governmental units that are not in the Boundary and Annexation Survey of that year. Governmental units electing participation in this service must draft the legal boundary updates upon Census Bureau-supplied maps. The legally effective dates of the boundaries may not be later than January 1 of the calendar year. The Census Bureau must receive the census maps annotated with the legally certified boundaries

and associated address ranges by April 1 of the same calendar year. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable, and that the legal boundaries on the maps have been attested by the governmental unit as submitted in accordance with state law or tribal authority.

(ii) [Reserved]

(2) *Expedited Certification.* (i) Expedited certification will be available where the customer requests any of the following:

(A) Certification of boundary updates legally effective after January 1 of the current calendar year; or

(B) Certification of boundary updates reported to the Census Bureau after April 1 of the current calendar year; or

(C) Certification of boundary updates by the Census Bureau before October 1 of the current calendar year.

(ii) Governmental units electing participation in this service must draft the legal boundary updates upon Census Bureau-supplied maps. To allow sufficient processing time, the Census Bureau must receive acceptable census maps annotated with the legally certified boundaries and associated address ranges no later than three months before the date requested by the customer to receive the population certificate. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable and that the legal boundaries on the maps have been attested as submitted in accordance with state law or tribal authority.

(c) *List of Standard Governmental Units.* The following is a list of the standard governmental units eligible for the Geographically Updated Population Certification Program:

(1) Federally recognized American Indian reservations and off-reservation trust land entities [tribal government]; this includes a reservation designated as a colony, community, Indian community, Indian village, pueblo, rancheria, reservation, reserve, and village.

(2) Counties and statistically equivalent entities, including the following: counties in 48 states; boroughs, municipi-

palities, and census areas in Alaska [state official]; parishes in Louisiana; and municipios in Puerto Rico.

(3) Minor civil divisions as recognized in Census 2000 in the following 28 states: Arkansas, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, and Wisconsin.

(4) Incorporated places, including the following: boroughs in Connecticut, New Jersey, and Pennsylvania; cities in 49 states and the District of Columbia; cities, boroughs, and municipalities in Alaska; towns in 30 states (excluding towns in New England, New York, and Wisconsin, which are minor civil divisions); and villages in 20 states.

(5) Consolidated cities.

(6) School districts.

(d) *Non-Standard Certifications.* Certifications for population and housing counts of non-standard geographic areas or of individual census blocks are not currently available under this program but will be announced under a separate notice at a later date.

(e) *Submitting Certification Requests.* Submit requests for certifications on Form BC-1869(EF), Request for Geographically Updated Official Population Certification, to the Census Bureau by fax, (301) 457-4714, or by e-mail, MSO.certify@census.gov. Form BC-1869(EF) will be available on the Census Bureau's Web site at: <http://www.census.gov/mso/www/certification/>.

A letter or e-mail communication requesting the service without Form BC-1869(EF) will be accepted only if it contains the information necessary to complete a Form BC-1869(EF).

[67 FR 72096, Dec. 4, 2002]

PART 60—PUBLIC INFORMATION

AUTHORITY: 5 U.S.C. 301, 552, 553, Reorganization Plan No. 5 of 1950; 31 U.S.C. 3717.

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§ 60.1 Public information.

The rules and procedures regarding public access to the records of the Bureau of the Census are found at 15 CFR part 4.

[57 FR 40841, Sept. 8, 1992]

PART 70—CUTOFF DATES FOR RECOGNITION OF BOUNDARY CHANGES FOR THE CENSUS 2000

Sec.

70.1 Cutoff dates and effect on enumeration and data tabulation.

70.2 “Municipality” and “county subdivision” defined for census purposes.

70.3 Effect of boundary changes occurring or reported after the cutoff dates.

AUTHORITY: 13 U.S.C. 4 and Department of Commerce Organization Order 35-2A (40 FR 42765).

SOURCE: 51 FR 24653, July 8, 1986, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 70 appear at 63 FR 10303, Mar. 3, 1998.

§ 70.1 Cutoff dates and effect on enumeration and data tabulation.

For the tabulation and publication of data from the Census 2000 of Population and Housing, the Bureau of the Census will recognize only those boundaries legally in effect on January 1, 2000 that have been reported officially to the Bureau of the Census no later than March 1, 2000. The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, States, and equivalent areas as those limits exist on January 1, 2000.

§ 70.2 “Municipality” and “county subdivision” defined for census purposes.

For the purposes of this part, the Bureau of the Census defines “municipalities” and “county subdivisions” to include the areas identified as incorporated places (such as cities and villages) and minor civil divisions (such as townships and magisterial districts). A more complete description appears on pages A-6 and A-11 of 1990 Census of Population, Volume 1, General Popu-

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lation Characteristics, 1990 CP-1-1, Appendix A.

[51 FR 24653, July 8, 1986, as amended at 63 FR 10303, Mar. 3, 1998]

§ 70.3 Effect of boundary changes occurring or reported after the cutoff dates.

The Bureau of the Census will not recognize changes in boundaries that become effective after January 1, 2000 in taking the 2000 Decennial Census; the Bureau of the Census will enumerate the residents of any area that are transferred to another jurisdiction after that date and report them for the Census 2000 as residents of the area in which they resided on January 1, 2000. The Bureau of the Census will not recognize in the data tabulations prepared for the 2000 census changes occurring on or before January 1, 2000, but not submitted officially to the Bureau of the Census until after March 1, 2000 except as necessary to conduct decennial census operations.

PART 80—FURNISHING PERSONAL CENSUS DATA FROM CENSUS OF POPULATION SCHEDULES

Sec.

80.1 General requirements.

80.2 Rules pertaining to records of the living.

80.3 Rules applicable to deceased persons and estates.

80.4 Signature of persons unable to sign their name.

80.5 Detrimental use of information.

80.6 False statements.

AUTHORITY: Sec. 1, Pub. L. 83-1158, 68 Stat. 1013 (13 U.S.C. 8).

§ 80.1 General requirements.

(a) Data from records of decennial census of population questionnaires pertaining to an individual will be released only in accordance with these rules.

(b) Census information contains only the responses recorded by the Census enumerator; no changes of any of these entries have been or can be made.

(c) Requests for information from decennial census of population records (herein “Census Information”) should be made available on Form BC-600, which is available from offices at the

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Census Bureau in Suitland, Maryland 20233, and Jeffersonville, Indiana 47131; all county courthouses; Social Security Administration field offices; post offices; and Immigration and Naturalization Service offices. A letter request—without Form BC-600—will be accepted only if it contains the information necessary to complete a Form BC-600. No application will be processed without payment of the required fee as set forth in 15 CFR 50.5.

(d) The Bureau may require verification of the identity of the applicant requesting Census information and it may require the applicant to submit the following notarized statement:

I, _____ (Printed name), do hereby certify that I am the individual to whom the requested record pertains or that I am within the class of persons authorized to act on his behalf in accordance with 15 CFR, Part 80.

(Signature) _____

(Date) _____

In the County of _____
State of _____

On this _____ day of _____, 19____,
_____ (Name of individual) who

is personally known to me, did appear before me and sign the above certificate.

(Signature) _____

(Date) _____

(S) My commission expires _____

(e) Except as otherwise provided, Census information will be provided only to the individual to whom the record pertains. It will include the names of the subject and the head of the household, the relationship of the subject to the head of the household, and the subject's age and birthplace.

(f) Similar Census information pertaining to other members of a household will be furnished only upon written authorization of the individual whose record is requested, except as provided in §80.3.

(g) Census information will not be furnished to another person unless the person to whom the information relates authorizes such release in the space provided on the Form BC-600.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983; 68 FR 42586, July 18, 2003]

§ 80.2 Rules pertaining to records of the living.

(a) An individual who has attained age 18 may request his or her own Census information.

(b) A parent may request Census information for and in behalf of a child who has not reached age 18. The request must be signed by one of the parents.

(c) A legal guardian may obtain Census information relating to a ward by submitting a certified copy of the order of guardianship appointment.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983]

§ 80.3 Rules applicable to deceased persons and estates.

(a) Census information relating to a deceased person may be released only to a parent, child, grandchild, brother, sister, spouse, insurance beneficiary, or the executor or administrator of a deceased person's estate. The request must be signed by a person entitled to receive the information as provided herein, state the relationship of the applicant to the deceased, and include a certified copy of the death certificate or other adequate proof of death. The request of an executor or administrator must be accompanied by a certified copy of the court order of appointment.

(b) Except for a spouse, a person related to the deceased person through marriage, such as an in-law relationship, is not eligible to request Census information on the deceased, whether or not the applicant was a member of the household of the deceased.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983]

§ 80.4 Signature of persons unable to sign their name.

A person requesting Census information who is unable to sign his or her name shall make an "X" mark where signature is required, and the mark must be witnessed by two persons who know the applicant. They must also sign the application certifying the applicant's identity. In the case of such

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persons who are unable to make an "X" mark, Census information can be released upon receipt of a physician's sworn statement verifying the disability and the written request of a parent, brother, sister, child or a spouse.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983]

§ 80.5 Detrimental use of information.

Section 8 of Title 13, United States Code requires that,

In no case shall information furnished under the authority of this section be used to the detriment of the persons to whom such information relates.

[40 FR 53232, Nov. 17, 1975]

§ 80.6 False statements.

Any false statement or forgery on the application or supporting papers required to obtain Census information is punishable by a fine and/or imprisonment pursuant to section 1001 of Title 18 of the United States Code.

(Approved by the Office of Management and Budget under control number 0607-0117)

[40 FR 53232, Nov. 17, 1975, as amended at 48 FR 56744, Dec. 23, 1983]

PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES

Sec.

- 90.1 Scope and applicability.
- 90.2 Policy of the Bureau of the Census.
- 90.3 Definitions.
- 90.4 General.
- 90.5 When an informal challenge may be filed.
- 90.6 Where to file challenge.
- 90.7 Evidence required.
- 90.8 Review of challenge.
- 90.9 When formal procedure may be invoked.
- 90.10 Form of formal challenge and time limit for filing.
- 90.11 Appointment of hearing officer.
- 90.12 Qualifications of hearing officer.
- 90.13 Offer of hearing.
- 90.14 Hearing.
- 90.15 Decision by Director.
- 90.16 Notification of adjustment.
- 90.17 Timing for hearing and decision.
- 90.18 Representation.

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AUTHORITY: 13 U.S.C. 4 and 181.

SOURCE: 44 FR 20647, Apr. 6, 1979, unless otherwise noted.

§ 90.1 Scope and applicability.

These rules prescribe the administrative procedure available to States and units of local government to challenge the current estimates of population or per capita income developed by the Bureau of the Census.

§ 90.2 Policy of the Bureau of the Census.

It is the policy of the Bureau of the Census to provide the most accurate population and per capita income estimates possible given the constraints of time, money, and available statistical techniques. It is also the policy of the Bureau to provide States and units of local government the opportunity to challenge these estimates and to present probative evidence relating to the accuracy of the estimates.

§ 90.3 Definitions.

As used in this part (except where the context clearly indicates otherwise) the following definitions shall apply:

(a) *Bureau* means the Bureau of the Census, Department of Commerce.

(b) *Challenge* means, in accordance with this part, the process of objecting to or calling into question the Bureau's population or per capita income estimates of a State or unit of local government by that State or unit of local government. A demand for adjustment to the General Revenue Sharing Act, Pub. L. 92-512, section 102(b), as amended (31 U.S.C. 1222(b)) does not constitute a challenge within the meaning of this part.

(c) *Director* means Director of the Bureau of the Census, or an individual designated by the Director to perform under this part.

(d) *Estimate* means a statistically derived intercensal population or per capita income figure prepared to update earlier census figures.

(e) *State* includes the District of Columbia.

(f) *Unit of local government* means the government of a county, municipality, township, place, or other minor civil

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division, which is a unit of general government below the State.

§ 90.4 General.

This part provides a procedure for a State or unit of local government to challenge the population or per capita income estimates of the Bureau. The Bureau shall receive these challenges and attempt to resolve them informally with the locality. If the challenge is not resolved informally, the challenging State or unit of local government may then, at its option, proceed formally.

§ 90.5 When an informal challenge may be filed.

An informal challenge to the population or per capita income estimates may be filed any time up to 180 days after the release of the estimates by the Bureau of the Census. Publication by the Bureau of the Census and simultaneous publication of a release notification in the FEDERAL REGISTER shall constitute release. A challenge to any estimate may also be filed any time up to 180 days from the date the Census Bureau, on its own initiative, revises that estimate.

If, however, a State or unit of local government has sufficiently meritorious reason for not filing in a timely manner, the Census Bureau has the discretion to accept the challenge.

[50 FR 28768, July 16, 1985]

§ 90.6 Where to file challenge.

A challenge must be prepared in writing by the unit of government and is to be filed with the Chief, Population Division, Bureau of the Census, Room 2011, Federal Building 3, Washington, D.C. 20233.

§ 90.7 Evidence required.

The challenging State or unit of local government shall provide whatever evidence it has relative to the challenge at the time the challenge is filed. The Bureau may request further evidence.

§ 90.8 Review of challenge.

The Chief, Population Division, Bureau of the Census, or the Chief's designee shall review the challenge and the evidence supporting the challenge

and shall attempt to resolve the challenge.

§ 90.9 When formal procedure may be invoked.

In the event the Chief, Population Division, is unable to resolve the challenge to the satisfaction of the challenging State or unit of local government, the challenging State or unit of local government shall be informed in writing of the reasons for the outcome and of its right to proceed formally.

§ 90.10 Form of formal challenge and time limit for filing.

The formal challenge shall be in writing and may be mailed or hand delivered to the Director, Bureau of the Census, Washington, D.C. 20233. The formal challenge shall include a list indicating the material submitted to the Chief, Population Division, during the informal stage, and shall include any additional relevant material it chooses to submit. The formal challenge shall be filed within 30 days of the date the State or unit of local government receives notification by certified mail (return receipt requested) of its right to proceed formally. If, however, a State or unit of local government has a sufficiently meritorious reason for not filing in a timely manner, the Bureau has the discretion to accept the formal challenge.

§ 90.11 Appointment of hearing officer.

Upon receipt of a formal challenge filed in accordance with this part, the Director will appoint a hearing officer to receive written and oral evidence.

§ 90.12 Qualifications of hearing officer.

The hearing officer, a person not involved in the preparation of the estimates being challenged, shall be appointed by the Director from a roster of employees of the Bureau of the Census who have been approved in advance by the Assistant Secretary for Administration, Department of Commerce.

§ 90.13 Offer of hearing.

The hearing officer shall receive the formal challenge and shall notify the State or unit of local government in writing of (a) its right to a hearing

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prior to the development of a recommended decision for the consideration of the Director; and (b) its right to the development of a recommended decision for the consideration of the Director without a hearing. If the State or unit of local government requests that a hearing be conducted, the hearing officer shall establish the date, time, and meeting place for the hearing, in accordance with § 19.14a.

§ 90.14 Hearing.

(a) The hearing shall be conducted by the same hearing officer who collected the documentary evidence, if possible, and shall be held at Bureau of the Census headquarters in Suitland, Md., unless the hearing officer determines that the hearing should be held elsewhere.

(b) The hearing shall be conducted in a manner so as to bring out the pertinent facts relating to the challenge.

(c) The rule of evidence will not be strictly enforced but irrelevant and unduly repetitious testimony shall be excluded.

(d) Cross-examination of all witnesses is permitted and all testimony shall be received under oath or affirmation.

(e) The hearing officer shall have the authority to: (1) Administer oaths or affirmations, (2) rule on the admissibility of evidence, (3) limit the number of witnesses, (4) exclude any person from the hearing room for contemptuous conduct or misbehavior that obstructs the hearing, (5) perform other such acts as are necessary or appropriate to the efficient conduct of any proceeding, and (6) make initial findings, analyses, and recommendations.

(f) The hearing shall be recorded but no written record will be prepared unless the Bureau so orders or unless the challenging locality desires one in whole or part and pays the costs of such a written record, or the apportioned costs should the Bureau also desire a written record.

(g) The hearing officer shall prepare findings, analyses, and recommendations and shall transmit them along with all documentary evidence received and the tape or written record (if any) of the hearing to the Director.

[44 FR 20647, Apr. 6, 1979, as amended at 50 FR 18990, May 6, 1985]

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§ 90.15 Decision by Director.

Upon receiving the material specified in § 90.14(g), the Director shall (a) review the findings and recommendations of the hearing officer, and (b) prepare and transmit a letter to the challenging State or unit of local government stating the decision and the reasons therefor. A copy of the hearing officer's findings, analyses, and recommendations shall also be transmitted to the challenging State or unit of local government, and is otherwise publicly available. This decision is final for the Department of Commerce.

§ 90.16 Notification of adjustment.

In the event that the Director finds that the population or per capita income estimate should be adjusted, the Bureau shall promptly inform the appropriate governmental agencies of the revision.

§ 90.17 Timing for hearing and decision.

A maximum period of 120 days, unless additional time is required for sufficiently meritorious reason, shall be provided beyond the closing date for the filing of informal challenges to allow for (a) resolution of informal challenges, (b) appointment of the hearing officer, and (c) the completion of formal hearings. A maximum of 30 additional days shall be allowed for deliberations by the hearing officer and staff. A maximum of an additional 30 days shall also be provided beyond this during which the Census Bureau Director must rule on all cases. Neither the timing nor the general provisions contained in these regulations shall affect the rights of communities to a review through the data improvement program of the Office of Revenue Sharing under the provisions of Pub. L. 92-512, section 102(b), as amended (31 U.S.C. 1222(b)). Localities challenging only through the Office of Revenue Sharing may not have access to a formal hearing as provided in these regulations.

§ 90.18 Representation.

A challenging unit of government may be represented by its chief executive officer or by counsel, or other duly

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authorized representative as designated by the chief executive officer in writing to the Bureau.

PART 100—SEAL

Sec.

- 100.1 Authority.
- 100.2 Description.
- 100.3 Custody.

AUTHORITY: R.S. 161, as amended, sec. 3, 68 Stat. 1012, as amended (5 U.S.C. 301, 13 U.S.C. 3).

SOURCE: 25 FR 2163, Mar. 16, 1960, unless otherwise noted. Redesignated at 50 FR 23947, June 7, 1985.

§ 100.1 Authority.

Pursuant to section 3 of Title 13, United States Code, the Bureau of the Census official seal and design thereof, which accompanies and is made a part of this document, is hereby approved.

§ 100.2 Description.

Seal: On a shield an open book beneath which is a lamp of knowledge emitting rays above in base two crossed quills. Around the whole a wreath of single leaves, surrounded by an outer band bearing between two stars the words "U.S. Department of Commerce" in the upper portion and "Bureau of the Census" in the lower portion, the lettering concentric with an inner beaded rim and an outer dentilated rim.

§ 100.3 Custody.

The seal shall remain in the custody of the Director, Bureau of the Census or such officer or employee of the Bureau as he designates and shall be affixed to all certificates and attestations that may be required from the Bureau.



PART 101—RELEASE OF DECENNIAL CENSUS POPULATION INFORMATION

AUTHORITY: 5 U.S.C. 301; 13 U.S.C. 4, 141, 195; 15 U.S.C. 1512.

§ 101.1 Report of tabulations of population to states and localities pursuant to 13 U.S.C. 141(c).

(a)(1) The Secretary of Commerce shall make the final determination regarding the methodology to be used in calculating the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c). The determination of the Secretary will be published in the FEDERAL REGISTER.

(2) The Secretary shall not make the determination specified in paragraph (a)(1) of this section until after he or she receives the recommendation of the Director of the Census, together with the report of the Executive Steering Committee for A.C.E. Policy, in accordance with paragraph (b)(1) of this section.

(b)(1) The Executive Steering Committee for A.C.E. Policy shall prepare a written report to the Director of the Census analyzing the methodologies that may be used in making the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c), and the factors relevant to the possible choices of methodology. The Director of the Census will forward the Executive Steering Committee for

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A.C.E. Policy report and his or her recommendation on methodology, if any, to the Secretary of Commerce.

(2) The recommendation of the Director of the Census, together with report of the Executive Steering Committee for A.C.E. Policy described in paragraph (b)(1) of this section, shall be released to the public at the same time it is delivered to the Secretary. This release to the public shall include, but is not limited to, posting of the report on the Bureau of the Census website and publication of the report in the FEDERAL REGISTER.

(3) The Executive Steering Committee for A.C.E. Policy is composed of the following employees of the Bureau of the Census:

(i) Deputy Director and Chief Operating Officer;

(ii) Principal Associate Director and Chief Financial Officer;

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(iii) Principal Associate Director for Programs;

(iv) Associate Director for Decennial Census (Chair);

(v) Assistant Director for Decennial Census;

(vi) Associate Director for Demographic Programs;

(vii) Associate Director for Methodology and Standards;

(viii) Chief; Planning, Research, and Evaluation Division;

(ix) Chief; Decennial Management Division;

(x) Chief; Decennial Statistical Studies Division;

(xi) Chief; Population Division; and

(xii) Senior Mathematical Statistician.

[66 FR 11232, Feb. 23, 2001]

PARTS 102-199 [RESERVED]

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SUBCHAPTER A—MEASUREMENT SERVICES

PART 200—POLICIES, SERVICES, PROCEDURES, AND FEES

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AUTHORITY: Sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets or applies sec. 7, 31 Stat. 1450; 15 U.S.C. 275a.

SOURCE: 45 FR 55166, Aug. 19, 1980, unless otherwise noted.

§ 200.100 Statutory functions.

(a) The National Institute of Standards & Technology (NIST) has been assigned the following functions (15 U.S.C. 271 *et seq.*):

(1) The custody, maintenance, and development of the national standards of measurement, and the provision of means and methods for making measurements consistent with those standards, including the comparison of standards used in scientific investigations, engineering, manufacturing, commerce, and educational institutions with the standards adopted or recognized by the Government.

(2) The determination of physical constants and properties of materials when such data are of great importance to scientific or manufacturing interests and are not to be obtained with sufficient accuracy elsewhere.

(3) The development of methods for testing materials, mechanisms, and structures, and the testing of materials, supplies, and equipment, including items purchased for use of Government departments and independent establishments.

(4) Cooperation with other governmental agencies and with private organizations in the establishment of standard practices, incorporated in codes and specifications.

(5) Advisory service to Government agencies on scientific and technical problems.

(6) Invention and development of devices to serve special needs of the Government.

(b) The calibration and testing activities of NIST stem from the functions in paragraphs (a) (1) and (3) of this section. NIST provides the central basis within the United States for a complete and consistent system of measurement; coordinates that system, and the measurement systems of other nations; and furnishes essential services leading to accurate and uniform physical measurements throughout this Nation's scientific community, industry, and commerce.

(c) The provision of standard reference materials for sale to the public is assigned to the Office of Standard Reference Materials of the National Measurement Laboratory, NIST. That Office evaluates the requirements of science and industry for carefully characterized reference materials, stimulates efforts of NIST to develop methods for production of needed reference materials and directs their production and distribution. For further information on standard reference materials see Subchapter B, Chapter II, Part 230, of this title.

§ 200.101 Measurement research.

(a) The NIST staff continually reviews the advances in science and the trends in technology, examines the measurement potentialities of newly discovered physical phenomena, and uses these to devise and improve standards, measuring devices, and measurement techniques. As new requirements appear, there are continual shifts of program emphasis to meet the most urgent needs for the measurement of additional quantities, extended ranges, or improved accuracies.

(b) The basic research and development activities of NIST are primarily

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funded by direct appropriations, and are aimed at meeting broad general needs. NIST may also undertake investigations or developments to meet some specialized physical measurement problem of another Government agency, industrial group, or manufacturing firm, using funds supplied by the requesting organization.

§ 200.102 Types of calibration and test services.

(a) NIST has developed instrumentation and techniques for realizing standards for the seven base units of the International System of Units, as agreed upon by the General Conference of Weights and Measures. Reference standards have been established not only for these seven base units, but also for many derived quantities and their multiples and submultiples. Such reference standards, or equivalent working standards, are used to calibrate laboratory and plant standards for other organizations. Accuracy is maintained by stability checks, by comparison with the standards of other national and international laboratories, and by the exploration of alternative techniques as a means of reducing possible systematic error.

(b) Calibrations for many types of instruments and ranges of physical quantities are described in the NIST Special Publication 250 (SP 250). (See § 200.115 for details relating to the description of service items and listing of fees.)

(c) In recent years NIST has offered to the public new measurement services called measurement assurance programs. These programs are designed for laboratories whose measurement process involves the calibration of other standards. A measurement assurance program is a measurement quality control process. By use of carefully designed redundant measurements and measurements made on NIST transport standards a total uncertainty of the laboratories measurement process can be determined by NIST. The results of these tests are then reported to the customer as uncertainties of the customer's measurements relative to national standards.

(d) Special measurements not listed in SP 250 may be made upon request. These might involve unusual physical

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quantities, upper or lower extremes of range, higher levels of accuracy, fast response speeds, short durations, broader ranges of associated parameters, or special environmental conditions. Such inquiries should describe clearly the measurement desired. Indication of the scientific or economic basis for the requirements to be satisfied will be helpful in determining future NIST programs. Fees for work accepted will be based upon actual costs incurred.

(e) The principal emphasis of NIST is on those calibrations and other tests requiring such accuracy as can be obtained only by direct comparison with its standards.

(f) Other services which may be obtained include:

(1) Tests of measuring instruments to determine compliance with specifications or claims, when the evaluation is critical in national scientific or technical operations, and when suitable facilities are not available elsewhere; and

(2) Referee tests in important cases when clients are unable to agree upon the method of measurement, the results of tests, or the interpretation of these results, but have agreed in advance in writing to accept and abide by the findings of NIST.

(g) NIST reserves the right to decline any request for services if the work would interfere with other activities deemed by the Director to be of greater importance. In general, measurement services are not provided when available from commercial laboratories.

(h) Suggestions will be offered on measurement techniques and on other sources of assistance on calibration or measurement problems when the equipment and personnel of NIST are unable to undertake the work. The National Conference of Standards Laboratories issues a Directory of Standards Laboratories in the United States which perform calibration work (obtainable from NCSL Secretariat, c/o National Institute of Standards & Technology, Boulder, CO 80303). Those laboratories which perform testing are listed in the ASTM Directory of Testing Laboratories, Commercial and Institutional. (Directory available from the American Society for Testing and

Materials, 1916 Race Street, Philadelphia, PA 19103.) Similar listings appear in buyer's guides for commercial products and in technical journals concerned with physical measurement.

§ 200.103 Consulting and advisory services.

(a) In areas of its special competence, NIST offers consulting and advisory services on various problems related to measurement, e.g., details of design and construction, operational aspects, unusual or extreme conditions, methods of statistical control of the measurement process, automated acquisition of laboratory data, and data reduction and analysis by computer. Brief consultation may be obtained at no charge; the fee for extended effort will be based upon actual costs incurred. The services outlined in this paragraph do not include services in connection with legal proceedings not involving the United States as a named party, nor to testimony or the production of data, information, or records in such legal proceedings which is governed by the policies and procedures set forth in Subchapter H, Chapter II, Part 275, of this title.

(b) To enhance the competence of standards laboratory personnel, NIST conducts at irregular intervals several group seminars on the precision measurement of specific types of physical quantities, offering the opportunity of laboratory observation and informal discussion. A brochure describing the current series of seminars can be obtained by writing the Office of Measurement Services, National Institute of Standards & Technology, Washington, DC 20234.

§ 200.104 Standard reference materials.

Often the performance of a device or structure can be evaluated at the user's laboratory by comparing its response to unknown materials with its response to a stable, homogeneous reference specimen which has been well-characterized with regard to the physical or chemical property being measured. For information regarding carefully characterized materials see Subchapter B, Chapter II, Part 230, of this title. The Office of Standard Reference

Materials in the NIST National Measurement Laboratory administers a program to provide many types of well-characterized materials that are needed to calibrate a measurement system or to produce scientific data that can be readily referred to a common base. NIST SP 260 is a catalog of Standard Reference Materials available from NIST.

§ 200.105 Standard reference data.

Data on the physical and chemical properties of the large variety of substances used in science and technology need to be compiled and evaluated for application in research, development, engineering design, and commerce. The Office of Standard Reference Data (OSRD) in the NIST National Measurement Laboratory provides coordination of and access to a number of governmental and nongovernmental data centers throughout this country and the world which are responsive to user needs for data. The OSRD's present program is assembled under a series of tasks which include data for application in energy, environment and health, industrial process design, materials durability, and resource recovery. The subject data are disseminated as hard-copy information in the Journal of Physical and Chemical Reference Data, published jointly with the American Chemical Society and the American Institute of Physics, in the National Standard Reference Data System reports as the NSRDS-NIST series, and as NIST special reports. Magnetic tapes of data on selected topics are also issued through the OSRD and the National Technical Information Service. A newsletter, "Reference Data Report," is issued bimonthly describing current activities. Information concerning the above is available upon request from the OSRD.

§ 200.106 Publications.

Publications provide the primary means of communicating the results of the NIST programs and services to its varied technical audiences, as well as to the general public. NIST issues some fifteen categories of publications including three periodicals, ten non-periodicals series, interagency reports, and

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papers in the journals and books of professional organizations, technological associations, and commercial publications. The calibration services, standard reference materials and related measurement services along with changes and fees are published in two Special Publications (SP's) and their supplements. These are SP 250 "Calibration and Related Measurement Services of the National Institute of Standards & Technology"¹ and SP 260 "NIST Standard Reference Materials Catalog."¹ A complete catalog of all publications by NIST authors is issued annually as a supplement to SP 305 "Publications of the National Institute of Standards & Technology." Announcements and listings of recent NIST publications and services are published in each issue of the bimonthly "NIST Journal of Research"² and the NIST monthly magazine, "Dimensions/NIST"². Complete citations to NIST publications, along with information on availability are published bimonthly in the "NIST Publications Newsletter", available free from the Technical Information and Publications Division, National Institute of Standards & Technology, Washington, DC 20234. NIST publications are also announced (with abstracts) in "Government Reports Announcements and Index" published every two weeks by the National Technical Information Service (NTIS), Springfield, Virginia 22161³. NTIS also sells microfiche copies of all NIST GPO-published documents, as well as paper copy and microfiche versions of NIST Inter-agency Reports.

¹Single copies available free from the National Institute of Standards & Technology, Washington, DC 20234.

²For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, for a subscription price. The annual subscription price for the NIST Journal of Research on the date of the publication of these regulations is \$13.00 and for Dimensions/NIST it is \$11.00. Prices, however, for these publications are subject to change without notice.

³The annual subscription rate at the date of the publication of these regulations for this service is \$275.00, North American Continent, \$375.00 all others.

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§ 200.107 WWV-WWVH-WWVB broadcasts.

(a) *Technical services.* The NIST radio stations WWV at Fort Collins, Colorado, and WWVH on the island of Kauai, Hawaii, broadcast a number of technical services continuously night and day. These services are:

(1) Standard radio frequencies, 2.5, 5, 10, 15, and 20, MHz (WWV) and 2.5, 5, 10, and 15 MHz (WWVH); (2) standard time signals; (3) time intervals; (4) UTI corrections; (5) standard audio frequencies; (6) standard musical pitch; (7) a slow time code; (8) Omega Navigation System status reports; (9) geophysical alerts; and (10) marine storm warnings. NIST also broadcasts time and frequency signals from its low frequency station, WWVB, also located at Fort Collins, Colorado.

(2) [Reserved]

(b) *Time announcements.* Once per minute voice announcements are made from WWV and WWVH. The two stations are distinguished by a female voice from WWVH and a male voice from WWV. The WWVH announcement occurs first, at 15 seconds before the minute, while the WWV announcement occurs at 7½ seconds before the minute. Coordinated Universal Time (UTC) is used in these announcements.

(c) *Time corrections.* The UTC time scale operates on atomic frequency, but by means of step adjustments is made to approximate the astronomical UTI scale. It may disagree from UTI by as much as 0.9 second before step adjustments of exactly 1 second are made. These adjustments, or leap seconds are required about once per year and will usually be made on December 31 or June 30. For those who need astronomical time more accurately than 0.9 second, a correction to UTC is encoded by the use of double ticks after the start of each minute. The first through the eighth seconds ticks will indicate a "plus" correction, and from the ninth through the 16th a "minus" correction. The correction is determined by counting the number of double ticks. For example, if the first, second, and third ticks are doubled, the correction is "plus" 0.3 second. If the ninth, 10th, 11th, and 12th ticks are doubled, the correction is "minus" 0.4 second.

(d) *Standard time intervals.* An audio pulse (5 cycles of 1000 Hz on WWV and 6 cycles of 1200 Hz on WWVH), resembling the ticking of a clock, occurs each second of the minute except on the 29th and 59th seconds. Each of these 5-millisecond second pulses occur within a 40-millisecond period, wherein all other modulation (voice or tone) is removed from the carrier. These pulses begin 10 milliseconds after the modulation interruption. A long pulse (0.8 second) marks the beginning of each minute.

(e) *Standard frequencies.* All carrier and audio frequencies occur at their nominal values according to the International System of Units (SI). For periods of 45-second duration, either 500-Hz or 600-Hz audio tones are broadcast in alternate minutes during most of each hour. A 440-Hz tone, the musical pitch A above middle C, is broadcast once per hour near the beginning of the hour.

(f) *Accuracy and stability.* The time and frequency broadcasts are controlled by the NIST atomic frequency standards, which realize the internationally defined cesium resonance frequency with an accuracy of 1 part in 10^{13} . The frequencies transmitted by WWV and WWVH are held stable to better than ± 2 parts in 10^{11} at all times. Deviations at WWV are normally less than 1 part in 10^{12} from day to day. Incremental frequency adjustments not exceeding 1 part in 10^{12} are made at WWV and WWVH as necessary. Changes in the propagation medium (causing Doppler effect, diurnal shifts, etc.) result in fluctuations in the carrier frequencies as received which may be very much greater than the uncertainties described above.

(g) *Slow time code.* A modified IRIG H time code occurs continuously on a 100-Hz subcarrier. The format is 1 pulse per second with a 1-minute time frame. It gives day of the year, hours, and minutes in binary coded decimal form.

(h) *Omega announcements.* Omega Navigation System status reports are broadcast in voice from WWV at 16 minutes after the hour and from WWVH at 47 minutes after the hour. The international Omega Navigation System is a very low frequency (VLF) radio navigation aid operating in the 10 to 14 kHz frequency band. Eight sta-

tions are in operation around the world. Omega, like other radio navigation systems, is subject to signal degradation caused by ionospheric disturbances at high latitudes. The Omega announcements on WWV and WWVH are given to provide users with immediate notification of such events and other information on the status of the Omega system.

(i) *Geophysical alerts.* These occur in voice at the 18th minute of each hour from WWV. They point out outstanding events which are in process, followed by a summary of selected solar and geophysical events in the past 24 hours and a forecast for the next 24 hours. They are provided by the Space Environment Laboratory, National Oceanic and Atmospheric Administration, Boulder, CO 80303.

(j) *Marine storm information.* Weather information about major storms in the Atlantic and eastern North Pacific are broadcast in voice from WWV at 8, 9, and 10 minutes after each hour. Similar storm warnings covering the eastern and central North Pacific are given from WWVH at 48, 49, and 50 minutes after each hour. An additional segment (at 11 minutes after the hour on WWV and at 51 minutes on WWVH) may be used when there are unusually widespread storm conditions. The brief messages are designed to tell mariners of storm threats in their areas. If there are no warnings in the designated areas, the broadcasts will so indicate. The ocean areas involved are those for which the U.S. has warning responsibility under international agreement. The regular times of issue by the National Weather Service are 0500, 1100, 1700, and 2300 UTC for WWV and 0000, 0600, 1200, and 1800 UTC for WWVH. These broadcasts are updated effective with the next scheduled announcement following the time of issue.

(k) *"Silent" periods.* These are periods with no tone modulation during which the carrier, seconds ticks, minute time announcements, and 100 Hz modified IRIG H time code continue. They occur during the 16th through the 20th minute on WWVH and the 46th through the 51st minute on WWV.

(l) *WWVB.* This station (antenna coordinates 40°40'28.3" N., 105°02'39.5" W.; radiated power 12 kw.) broadcasts on 60

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kHz. Its time scale is the same as for WWV and WWVH, and its frequency accuracy and stability are the same. Its entire format consists of a 1 pulse per second special binary time code giving minutes, hours, days, and the correction between its UTC time scale and UTI astronomical time. Identification of WWVB is made by its unique time code and a 45° carrier phase shift which occurs for the period between 10 minutes and 15 minutes after each hour. The useful coverage area of WWVB is within the continental United States. Propagation fluctuations are much less with WWVB than with high-frequency reception, permitting frequency comparisons to be made to a few parts in 10¹¹ per day.

(m) *Special Publication 432*. This publication describes in detail the standard frequency and time service of NIST. Single copies may be obtained at no charge upon request from the National Institute of Standards & Technology, Time & Frequency Services Group, 524.06, Boulder, CO 80303. Quantities may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a nominal charge per copy.

§ 200.108 Request procedure.

(a) A formal purchase order for the calibration or test should be sent before or at the time the instrument or standard is shipped. The purchase order should provide clear identification of the apparatus being submitted, and give separate instructions for return shipment, mailing of report, and billing. If a customer wishes to minimize the time during which the equipment is out of service, the customer can usually arrange to be notified of the scheduled test date to allow timely shipment. (See §200.110.) Requests from Federal agencies, or from State agencies, for calibrations or tests on material to be used on private or Federal contract work should be accompanied either by purchase order or by letter or document authorizing the cost of the work to be billed to the agency.

(b) The submission of a purchase order for measurement services under this subchapter shall be understood as constituting an agreement on the part of the customer to be bound by the re-

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strictions on the use of results as set forth in §200.113 of this part. Acceptance of purchase orders does not imply acceptance of any provisions set forth in the order contrary to the policy, practice, or regulations of NIST or the U.S. Government. (A statement to the effect that NIST is an agency of the U.S. Government should satisfy other Government agencies with regard to compliance with Government regulations and Executive orders.)

(c) A test number will be assigned by NIST to each instrument or group of similar instruments or standards when the order is accepted. This test number should be referred to in all subsequent communications. Also, each instrument in a group must be uniquely identified, usually by the manufacturer's name and instrument serial number. When the serial number is lacking, an alternative identifying mark should be provided. If none is found, NIST will mark the piece with an NIST identification number. If the apparatus submitted has been previously calibrated by NIST, the serial number or identifying mark should be given on the new order, so that a continuing record of stability history can be established.

(d) Inquiries for measurement services should be directed to the NIST address listed in the various sections of the Appendix to SP 250.

§ 200.109 Shipping, insurance, and risk of loss.

(a) Shipment of apparatus to NIST for calibration or other test should be made only after the customer has accepted the estimate of cost and the tentative scheduling. Repairs and adjustments on apparatus submitted should be attended to by the owner, since NIST will not undertake them except by special arrangement. Apparatus not in good condition will not be calibrated. If defects are found after calibration has begun, the effort may be terminated, a report issued summarizing such information as has been found, and a fee charged in accordance with the amount of work done.

(b) The customer should pack apparatus sent to NIST so as to minimize the likelihood of damage in shipment and handling. Suggestions on packing and shipping are made in some sections

of SP 250. In every case, the sender should consider the nature of the apparatus, pack it accordingly, and clearly label shipments containing fragile instruments or materials, such as glass and the like.

(c) To minimize damage during shipment resulting from inadequate packing, the use of strong reusable containers is recommended. As an aid in preventing loss of such containers, the customer's name should be legibly and permanently marked on the outside. In order to prolong the container's use the notation "REUSABLE CONTAINER, DO NOT DESTROY" should be marked on the outside.

(d) Shipping and insurance coverage instructions should be clearly and legibly shown on the purchase order for the calibration or test. The customer must pay shipping charges to and from NIST; shipments from NIST will be made collect. The method of return transportation should be stated, and it is recommended that return shipments be insured, since NIST will not assume liability for their loss or damage. For long-distance shipping it is found that air express and air freight provide an advantage in reduction of time in transit. If return shipment by parcel post is requested or is a suitable mode of transportation, shipments will be prepaid by NIST, but without covering insurance. When no shipping or insurance instructions are furnished, return shipment will be made by common carrier collect, but uninsured.

(e) NIST will not be responsible for the risk of loss or damage to any item during shipment to or from NIST. Any arrangements for insurance covering this risk must be made by the customer. Return shipment will be made by NIST as indicated in paragraph (d) of this section. The purchase order should always show the value of the equipment, and if transit insurance is carried by the customer, this fact should be stated.

(f) The risk of loss or damage in handling or testing of any item by NIST must be assumed by the customer, except when it is determined by NIST that such loss or damage was occasioned solely by the negligence of NIST personnel.

(g) When a test number has been assigned prior to shipment to NIST, this number should be clearly marked on the shipping container. When a test number has not been assigned, an invoice, copy of the purchase order, or letter should be enclosed in the shipment to insure proper identification. The original purchase order should be forwarded as appropriate to:

Office of Measurement Services, National Institute of Standards & Technology, Washington, DC 20234; or to Measurement Services Clerk, National Institute of Standards & Technology, Boulder, CO 80303.

(h) The calibrations listed in SP 250 are performed at Boulder, Colorado and Gaithersburg, Maryland.

§ 200.110 Priorities and time of completion.

Schedule work assignments for calibrations and other tests will generally be made in the order in which confirmed requests are received. However, Government work may be given priority. On the regular services, the workload is usually such that the turnaround interval, between the date a customer's apparatus is received and the date it is prepared for return shipment, will be not more than 45 days. Some types of instruments may require considerably longer, particularly if their abnormal behavior requires reruns to check reliability. The customer who can spare the instrument for only a short time can usually arrange by letter or telephone call for shipping it to NIST just as the assigned starting date approaches. A notice will be sent acknowledging receipt of the customer's standard and/or purchase order. If both a confirmed purchase order (or equivalent) and the apparatus have been received, estimates of the completion date and the calibration fee will be sent upon request.

§ 200.111 Witnessing of operations.

NIST welcomes scientists and engineers who may wish to visit its laboratories and discuss its methods. Ordinarily visitors will not be permitted to witness the actual carrying out of highly precise measurements because their presence introduces distraction that may lead to errors or delays. This policy may be waived in those cases

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where NIST determines that the visitor can be of service in setting up apparatus of a new or unusual nature, in the case of referee tests, or in other cases in which the legal validity of the result may require the presence of duly authorized witnesses.

§ 200.112 Reports.

(a) Results of calibrations and other tests are issued to the customer as formal reports entitled, "National Institute of Standards & Technology Report of Calibration," "National Institute of Standards & Technology Report of Test," or "National Institute of Standards & Technology Report of Analysis," as appropriate. Copies are not supplied to other parties except under applicable Federal law. Whenever formal certification is required by law, or to meet special conditions adjudged by NIST to warrant it, a letter will be provided certifying that the particular item was received and calibrated or tested, and identifying the report containing the results.

(b) NIST reports of calibration generally include in sentence form a statement of the uncertainty attached to the numerical values reported. Limits of uncertainty usually comprise an estimate of systematic error plus a value of imprecision. Details on how these estimates are arrived at are in many cases included in the calibration report. Additional information may be found in SP 250.

(c) The NIST practice is to express data given in calibration or test reports in the SI or International System of Units. The International System of Units (SI) was defined and given official status by the 11th General Conference of Weights and Measures, 1960. A complete listing of SI units is presented in detail in NIST SP 330. The NIST will express data in SI units unless this makes communication excessively complicated. For example, commercial gage designations, commonly used items identified by nominal dimensions, or other commercial nomenclatures or devices (such as drill sizes, or commercial standards for weights and measures) expressed in customary units are an exception from this practice. However, even in such instances, when practical and meaningful, SI and

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customary units may be given in parallel. Users of NIST calibration services may specify the units to be used in the calibration, especially for commercial devices and standards using customary units or units having some legal definition.

§ 200.113 Use of results or reports.

(a) As the national standards laboratory of the United States, NIST maintains and establishes the primary standards from which measurements in science and industry ultimately derive. It is therefore sometimes desirable for manufacturers or users of measurement standards to make appropriate reference to the relationship of their calibrations to NIST calibrations. The following considerations must be borne in mind, and shall be understood as constituting an agreement on the part of the NIST customer to be bound thereby in making reference to NIST calibration and test reports.

(b) The results of calibrations and tests performed by NIST are intended solely for the use of the organization requesting them, and apply only to a particular device or specimen at the time of its test. The results shall not be used to indicate or imply that they are applicable to other similar items. In addition, such results must not be used to indicate or imply that NIST approves, recommends, or endorses the manufacturer, the supplier, or the user of such devices or specimens, or that NIST in any way "guarantees" the later performance of items after calibration or test.

(c) NIST declares it to be in the national interest that it maintain an impartial position with respect to any commercial product. Advertising the findings on a single instrument could be misinterpreted as an indication of performance of other instruments of identical or similar type. There will be no objection, however, to a statement that the manufacturer's primary standards have been periodically calibrated by NIST, if this is actually the case, or that the customer might arrange to have NIST calibrate the item purchased from the manufacturer.

(d) NIST does not approve, recommend, or endorse any proprietary product or proprietary material. No

reference shall be made to NIST, or to reports or results furnished by NIST in any advertising or sales promotion which would indicate or imply that NIST approves, recommends, or endorses any proprietary product or proprietary material, or which has as its purpose an intent to cause directly or indirectly the advertised product to be used or purchased because of NIST test reports or results.

In its own activities as a scientific institution, NIST uses many different materials, products, types of equipment, and services. This use does not imply that NIST has given them a preferential position or a formal endorsement. Therefore, NIST discourages references, either in advertising or in the scientific literature, which identify it as a user of any proprietary product, material, or service. Occasionally, effective communication of results by NIST to the scientific community requires that a proprietary instrument, product, or material be identified in an NIST publication. Reference in an NIST publication, report, or other document to a proprietary item does not constitute endorsement or approval of that item and such reference should not be used in any way apart from the context of the NIST publication, report, or document without the advance express written consent of NIST.

§ 200.114 Fees and bills.

(a) In accordance with 15 U.S.C. 271 *et seq.*, fees are charged for all measurement services performed by NIST, unless waived by the Director, or the Director's designee, when deemed to be in the interest of the Government. The above-mentioned statutes authorize the issuance from time to time of appropriate regulations regarding the payment of fees, the limits of tolerance on standards submitted for verification, and related matters.

(b) The minimum fee for any service request accepted by NIST is \$10, unless otherwise indicated in SP 250. If apparatus is returned without testing, a minimum charge of \$10 may be made to cover handling. Charges commensurate with the work performed will be as-

essed for calibrations which cannot be completed because of faulty operation of the customer's device. Fees for calibrations or tests include the cost of preparation of an NIST report. Remittances should be made payable to the National Institute of Standards & Technology.

§ 200.115 Description of services and list of fees, incorporation by reference.

(a) NIST Special Publication 250, "Calibration and Related Measurement Services of the National Institute of Standards & Technology" is hereby incorporated by reference, pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. SP 250 states the authority under which NIST performs various types of measurement services including calibrations and tests and charges fees therefor, states the general conditions under which the public may secure such services, describes these services in considerable detail, and lists the fees to be charged, and sets out the instructions for requesting them in an appendix which is reviewed, revised and reissued semi-annually (December and June). The Director, Office of the Federal Register, approved the incorporation by reference on December 28, 1967.

(b) SP 250 is available at the following places:

(1) Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(2) Technical Information and Publications Division, National Institute of Standards & Technology, Washington, DC 20234.

(3) District Offices of the U.S. Department of Commerce.

(4) Federal Depository Libraries.

(c) Revisions of SP 250 will be issued from time to time by the National Institute of Standards & Technology, Washington, DC 20234.

(d) Further information concerning policies, procedures, services, and fees may be obtained by writing the Office of Measurement Services, National Institute of Standards & Technology, Washington, DC 20234.

SUBCHAPTER B—STANDARD REFERENCE MATERIALS

PART 230—STANDARD REFERENCE MATERIALS

Subpart A—General Information

Sec.

230.1 Introduction.

230.2 Identification of Standard Reference Materials.

230.3 New Standard Reference Materials.

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Subpart C—Description of Services and List of Fees

230.7 Description of services and list of fees, incorporation by reference.

AUTHORITY: Sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets and applies sec. 7, 70 Stat. 959; 15 U.S.C. 275a.

SOURCE: 41 FR 8472, Feb. 27, 1976, unless otherwise noted.

Subpart A—General Information

§ 230.1 Introduction.

This part states the procedure for ordering Standard Reference Materials (SRM's) issued by the National Institute of Standards & Technology. SRM's are used to calibrate measurement systems, evaluate measurement methods, or produce scientific data that can be referred to a common base. NIST Special Publication 260, "Catalog of NIST Standard Reference Materials," lists and describes the SRM's issued by NIST. SP 260 is periodically revised to include new SRM's and eliminate those that have been discontinued. Between editions of SP 260, supplements are issued that list new or renewal SRM's not listed in SP 260. In addition, these supplements list the fees charged for available SRM's.

[41 FR 8472, Feb. 27, 1976, as amended at 55 FR 38315, Sept. 18, 1990]

§ 230.2 Identification of Standard Reference Materials.

The SRM's are listed by category in SP 260 and by sequential number in the supplements. The number uniquely identifies a particular SRM. Renewals are indicated by the addition of a letter to the original number. Thus, 11a is the first, 11b the second, and 11c the third renewal of SRM 11, Basic Open-Hearth Steel, 0.2 percent carbon. In this way, a particular number or number and letter always represent a material of fixed or approximately fixed composition.

§ 230.3 New Standard Reference Materials.

When new SRM's or renewals of old ones are issued, announcements are made in SP 260, its supplement, and in scientific and trade journals.

Subpart B—Purchase Procedure

§ 230.4 Ordering.

Orders should be addressed to the Office of Standard Reference Materials, National Institute of Standards & Technology, Washington, DC 20234. Orders should give the amount (number of units), catalog number and name of the standard requested. *For example:* 1 each, SRM 11h, Basic Open-Hearth Steel, 0.2 percent C. These materials are distributed only in the units listed.

[41 FR 8472, Feb. 27, 1976, as amended at 55 FR 38315, Sept. 18, 1990]

§ 230.5 Terms and shipping.

(a) Prices are given in the SP 260 supplement. These prices are subject to revision and orders will be billed for prices in effect at the time of shipment. No discounts are given on purchases of SRM's.

(b) Payment need not accompany a purchase order. Payment is due within 30 days of receipt of an invoice.

(c) SRM's are shipped in the most expeditious manner that complies with transportation and postal laws and regulations.

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§ 230.6 Standard Reference Materials out of stock.

Orders for out-of-stock SRM's will be returned with information as to future availability.

Subpart C—Description of Services and List of Fees

§ 230.7 Description of services and list of fees, incorporation by reference.

(a) The text of NIST Special Publication 260, "Catalog of NIST Standard Reference Materials," and its supplement are hereby incorporated by reference pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51.

(b) SP 260 describes the SRM's that are available and states the procedure

for ordering the materials. SP 260 is available at the following places:

Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Office of Standard Reference Materials, National Institute of Standards & Technology, Washington, DC 20234.

(c) Supplements are issued when needed to reflect additions, deletions, and corrections to SP 260, and to list fees charged for the SRM's. Supplements are available from the Office of Standard Reference Materials, National Institute of Standards & Technology, Washington, DC 20234.

[41 FR 8472, Feb. 27, 1976, as amended at 55 FR 38315, Sept. 11, 1990]

SUBCHAPTER C—TRANSCRIPT SERVICES [RESERVED]

SUBCHAPTER D—STANDARDS FOR BARRELS

PART 240—BARRELS AND OTHER CONTAINERS FOR LIME

Sec.	
240.1	Title of act.
240.2	Application.
240.3	Permissible sizes.
240.4	Definitions.
240.5	Required marking.
240.6	Tolerances.

AUTHORITY: Sec. 4, 39 Stat. 531; 15 U.S.C. 240.

SOURCE: 13 FR 8372, Dec. 28, 1948, unless otherwise noted.

§ 240.1 Title of act.

The act, "Pub. L. 228, 64th Congress," approved August 23, 1916 (39 Stat. 530; 15 U.S.C. 237-242), entitled "An Act to standardize lime barrels," shall be known and referred to as the "Standard Lime-Barrel Act."

§ 240.2 Application.

The rules and regulations in this part are to be understood and construed to apply to lime in barrels, or other containers packed, sold, or offered for sale for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia; and to lime in containers of less capacity than the standard small barrel sold in interstate or foreign commerce; and to lime imported in barrels from a foreign country and sold or offered for sale; also to lime not in barrels or containers of less capacity than the standard small barrel, sold, charged for, or purported to be delivered as a large or small barrel or a fractional part of said small barrel of lime, from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia.

§ 240.3 Permissible sizes.

Lime in barrels shall be packed only in barrels containing 280 pounds or 180 pounds, net weight. For the purposes of this section the word "barrel" is defined as a cylindrical or approximately cylindrical vessel, cask or drum.

(Sec. 2, 39 Stat. 530; 15 U.S.C. 238)

§ 240.4 Definitions.

(a) The term *container of less capacity than the standard small barrel*, as mentioned in section 3 of the law and as used in the rules and regulations in this part, is defined as any container not in barrel form containing therein a net weight of lime of less than 180 pounds.

(b) The term *label* as used in the rules and regulations in this part is defined as any printed, pictorial, or other matter upon the surface of a barrel or other container of lime subject to the provisions of this act, or upon cloth or paper or the like which is permanently affixed to it by pasting or in a similar manner.

(c) The term *tag* is defined as a tough and strong strip of cloth or paper or the like, bearing any printed, pictorial, or other matter, which is loose at one end and which is secured to a container of lime subject to the provisions of the act.

(Sec. 3, 39 Stat. 530; 15 U.S.C. 239)

§ 240.5 Required marking.

(a) The lettering required upon barrels of lime by section 2 of the law shall be as follows: The statement of net weight shall be in boldface capital letters and figures at least 1 inch in height and not expanded or condensed; it shall be clear, legible, and permanent, and so placed with reference to the other lettering that it is conspicuous. The name of the manufacturer of the lime and where manufactured, and, if imported, the name of the country from which it is imported, shall be in boldface letters at least one-half inch in height and not expanded or condensed, and shall be clear, legible, conspicuous, and permanent. None of these letters and figures shall be superimposed upon each other, nor shall any other characters be superimposed upon the required lettering or otherwise obscure it. All the above statements shall form parts of the principal label.

(b) The information required upon containers of lime of less capacity than the standard small barrel by section 3 of the law shall be included in a label:

Provided, however, That in order to allow the utilization of second-hand or returnable bags made of cloth, burlap, or the like, such information may be upon a tag firmly attached to the container in a prominent and conspicuous position. In case a tag is used to give the required information there must not be any label or another tag upon the container which bears any statement having reference to lime, or any statement of weight whatever, which is not identical with the information upon the tag mentioned above; if a container is to be utilized which bears any such inaccurate information upon a label, such container shall be turned inside out or such information shall be obliterated in so far as it is inaccurate by blotting out the letters or figures; or if such inaccurate information is upon a tag, by removing such tag.

(c) If the required lettering is upon a label, the statement of net weight shall be in bold-face capital letters and figures at least three-fourths inch in height and not expanded or condensed; it shall be clear, legible, and permanent, and so placed with reference to the other lettering that it is conspicuous. The word "net" shall form part of the statement of weight. The name of the manufacturer of the lime and the name of the brand, if any, under which it is sold, and, if imported, the name of the country from which it is imported, shall be in bold face letters at least one-half inch in height and not expanded or condensed, and shall be clear, legible, conspicuous, and permanent. None of these letters and figures shall be superimposed upon each other, nor shall any other characters be superimposed upon the required lettering or otherwise obscure it. All the above statements shall form parts of the principal label.

(d) If the required lettering is upon a tag, the statement of net weight shall be in bold-face capital letters and figures not less than one-half the height of the largest letters or figures used upon such tag: *Provided, however,* That in every case they shall be not less than one-eighth inch in height (12-point capitals), and not expanded or condensed. The word "net" shall form part of the statement of weight. The statement shall be clear, legible, and

permanent, and so placed with reference to the other lettering that it is conspicuous. The name of the manufacturer of the lime, and the name of the brand, if any, under which it sold, and, if imported, the name of the country from which it is imported, shall be in bold-face letters and figures not less than one-eighth inch in height (12-point capitals), and not expanded or condensed, and shall be clear, legible, conspicuous, and permanent. None of these letters and figures shall be superimposed upon each other nor shall any other characters be superimposed upon the required lettering or otherwise obscure it. All the above statements shall be included upon the same side of the tag.

(e) In case the lime is actually packed in barrels or in containers of less capacity than the standard small barrel by some person other than the manufacturer of the lime, the information mentioned above must be given in the manner there described, and in addition there must be a statement to this effect: "Packed by _____" (giving the name and address of the packer). This statement shall be in letters not smaller than is specified for the general statement required in the case of barrels and containers of less capacity than the standard small barrel, respectively (see paragraphs (a) and (b) of this section); it shall not be obscured and shall form part of the principal label or be upon the same side of the tag as in those cases provided.

(f) In the case of all lime sold in barrels, the actual place of manufacture of the lime shall be stated on the barrel. In general, this will be the name of the post office nearest or most accessible to the plant. However, when the actual place of manufacture of the lime and the offices of the company are separated but are within the boundaries of the same county of a State, or when, though not within the boundaries of the same county they are so close together that the post-office address of the offices represents substantially and to all intents and purposes the actual place of manufacture of the lime, then the post-office address of the offices of the company will be sufficient: *Provided, however,* That the address given

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shall always correctly show the State in which the lime is actually manufactured.

(g) More than one place of manufacture of a manufacturer shall not be shown on the same barrel unless the one at which the particular lime in question is manufactured is pointed out.

(h) If the location of the home offices is stated and this is not the place of manufacture within the meaning of the above definition, an additional statement must be included to this effect: "Manufactured at _____" (giving the location of the plant).

(Secs. 2, 3, 39 Stat. 530; 15 U.S.C. 238, 239)

§ 240.6 Tolerances.

(a) When lime is packed in barrels the tolerance to be allowed on the large barrel or the small barrel of lime shall be 5 pounds in excess or in deficiency on any individual barrel: *Provided, however,* That the average error on 10 barrels of the same nominal weight and packed by the same manufacturer shall in no case be greater than 2 pounds in excess or in deficiency. In case all the barrels available are not weighed, those which are weighed shall be selected at random.

(b) When lime is packed in containers of less capacity than the standard small barrel, the tolerance to be allowed in excess or in deficiency on individual containers of various weights, shall be the values given in the column headed "Tolerance on individual package," of the following table: *Provided, however,* That the average error on 10 containers of the same nominal weight and packed by the same manufacturer shall in no case be greater than the values given in the column headed "Tolerance on average weight," of the following table. In case all the containers available are not weighed, those which are weighed shall be selected at random.

Weight of packaged	Tolerance on individual package (pounds)	Tolerance on average weight (pounds)
Not greater than 50 lbs	1½	¾
More than 50 lb. and not greater than 100 lbs	2	¾
More than 100 lb. and not greater than 150 lb	3	1¼

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Weight of packaged	Tolerance on individual package (pounds)	Tolerance on average weight (pounds)
More than 150 lb. and less than 180 lb	4	1½

(c) When lime in bulk is sold, charged for, or purported to be delivered as a definite number of large or small barrels, the tolerance to be allowed in excess or in deficiency on such amounts of lime shall be 15 pounds per 1,800 pounds (10 small barrels), or 25 pounds per 2,800 pounds (10 large barrels).

PART 241—BARRELS FOR FRUITS, VEGETABLES AND OTHER DRY COMMODITIES, AND FOR CRANBERRIES

- Sec.
- 241.1 Capacities.
- 241.2 Legal standard barrels.
- 241.3 Application of tolerance for "distance between heads."
- 241.4 Application of tolerance for "diameter of head."
- 241.5 Standard dimensions.
- 241.6 Classes of barrels for tolerance application.
- 241.7 Tolerances to be allowed.

AUTHORITY: Sec. 3, 38 Stat. 1187; 15 U.S.C. 236.

SOURCE: 13 FR 8373, Dec. 28, 1948, unless otherwise noted.

NOTE: The rules and regulations in this part refer entirely to individual barrels, and no separate tolerance has been placed on the average content of a number of barrels taken at random from a shipment. It is not believed that barrels can be so made as to take advantage of the tolerances, and, of course, no attempt should be made to do this. It is, therefore, expected that as many barrels will be above as below the standard capacity.

§ 241.1 Capacities.

(a) The capacities of the standard barrel for fruits, vegetables, and other dry commodities, other than cranberries, and its subdivisions, are as follows:

Size	Cubic inches	Bushels ¹	Quarts ¹
Barrel	7,056	3.281	105
¾ barrel	5,292	2.46	78¾
½ barrel	3,528	1.641	52½
¼ barrel	2,352	1.094	35

¹ Struck measure.

(b) The capacities of the standard cranberry barrel and its subdivisions are as follows:

Size	Cubic inches	Bushels ¹	Quarts ¹
Cranberry barrel	5,826	2,709	86 ⁴⁵ / ₆₄
¾ cranberry barrel	4,369.5	2,032	65 ¹ / ₆₄
½ cranberry barrel	2,913	1,355	43 ¹¹ / ₃₂
⅓ cranberry barrel	1,942	.903	28 ²⁹ / ₃₂

¹ Struck measure.

(Sec. 1, 38 Stat. 1186; 15 U.S.C. 234)

§ 241.2 Legal standard barrels.

(a) Any barrel having the dimensions specified for a standard barrel for fruits, vegetables, and other dry commodities, other than cranberries, in section 1 of the standard-barrel law, or any barrel or a subdivision thereof having the contents specified in section 1 of the standard-barrel law and in § 241.1(a) regardless of its form or dimensions, is a legal standard barrel for fruits, vegetables, or other dry commodities other than cranberries, or a legal subdivision thereof. No other barrel or subdivision in barrel form is a legal container for fruits, vegetables, or other dry commodities other than cranberries.

(b) Any barrel having the dimensions specified for a standard barrel for cranberries in section 1 of the standard-barrel law, or any subdivision thereof having the contents specified in § 241.1(b), regardless of its form or dimensions, is a legal standard barrel for cranberries or a legal subdivision thereof. No other barrel or subdivision in barrel form is a legal container for cranberries.

(Sec. 1, 38 Stat. 1186; 15 U.S.C. 234)

§ 241.3 Application of tolerance for "distance between heads."

The tolerance established in this part for the dimension specified as "distance between heads" shall be applied as follows on the various types of barrels in use:

(a) When a barrel or subdivision thereof has two heads, the tolerance shall be applied to the distance between the inside surfaces of the heads and perpendicular to them.

(b) When a barrel or subdivision thereof has but one head and a croze ring or other means for the insertion of a head, such as an inside hoop, etc., at

the opposite end, the tolerance shall be applied to the distance from the inside surface of the bottom head and perpendicular to it to the inside edge of the croze ring, or to a point where the inside surface of a head would come were such head inserted in the barrel.

(c) When a barrel or subdivision thereof has but one head and no croze ring or other means for the insertion of a head, such as an inside hoop, etc., at the opposite end, the tolerance shall be applied to the distance from the inside surface of the bottom head and perpendicular to it to a point 1½ inches from the opposite end of the staves in the case of a barrel or a ¾ barrel, and to a point 1 inch or ⅞ inch from the opposite end of the staves in the case of the ½ barrel and ⅓ barrel, respectively. When a barrel or subdivision thereof has been manufactured with but one head and no croze ring or other means for the insertion of a head at the opposite end, and it is desired to insert a second head, the croze ring shall be so cut that the inside edge shall not be more than 1½ inches from the end of the staves in the case of a barrel or ¾ barrel or not more than 1 inch or ⅞ inch from the end of the staves in the case of the ½ barrel and ⅓ barrel, respectively, or the other means shall be so adjusted that the inside surface of the head when inserted shall not exceed these distances from the end of the staves.

§ 241.4 Application of tolerance for "diameter of head."

(a) The tolerance established in this part for the dimension specified as "diameter of head" shall be applied to the diameter of the head over all, including the part which fits into the croze ring of the completed barrel.

(b) The tolerance established in this part for the dimension specified as "effective diameter of head" shall be applied as follows on the various types of barrels and subdivisions in use;

(1) When a barrel or subdivision thereof has two heads, the tolerance shall be applied to the mean of the average diameters from inside to inside of staves at the inner edges of the heads.

(2) When a barrel or subdivision thereof has but one head and a croze

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ring or other means for the insertion of a head at the opposite end, the tolerance shall be applied to the mean of the average diameters, one taken from inside to inside of staves at the inner edge of the head, the other from inside to inside of staves at the inner edge of the croze ring, or from inside to inside of staves at a point where the inside surface of a head would come were such head inserted in the barrel.

(3) When a barrel or subdivision thereof has but one head and no croze ring or other means for the insertion of a head at the opposite end, the tolerance shall be applied to the mean of the average diameters, one taken from inside to inside of staves at the inner edge of the head, the other taken from inside to inside of staves at a point 1 1/8 inches from the end of the staves in the case of a barrel or 3/4 barrel, or at a point 1 inch or 7/8 inch from the end of the staves in the case of a 1/2 barrel or 1/3 barrel, respectively.

(c) The standard allowance for depth of croze ring shall be 3/16 inch. Therefore, the standard "effective diameter of head" in the case of the standard barrel is 16 3/4 inches and in the case of the standard cranberry barrel is 15 7/8 inches.

§ 241.5 Standard dimensions.

Whenever in the rules and regulations in this part the error on a dimension is mentioned, this error shall be determined by taking the difference between the actual measured dimension and the standard dimension. The error is an error in excess and is to be preceded by a plus sign when the measured dimension is greater than the standard dimension. The error is an error in deficiency and is to be preceded by a minus sign when the measured dimension is less than the standard dimension.

(a) The standard dimensions of a barrel for fruits, vegetables, and other dry commodities other than cranberries, and of a barrel for cranberries, with which the actual measured dimensions are to be compared, are as follows:

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Dimensions	Barrel for fruits, vegetables, and other dry commodities other than cranberries (inches)	Barrel for cranberries (inches)
Diameter of head	17 1/8	16 1/4
Effective diameter of head (see § 241.4)	16 3/4	15 7/8
Distance between heads	26	25 1/4
Circumference of bulge, outside measurement	64	58 1/2
Length of stave	28 1/2	28 1/2

(b) In the case of all subdivisions of the barrel for fruits, vegetables, and other dry commodities other than cranberries, and all subdivisions of the barrel for cranberries, the following dimensions are hereby standardized for the purpose of the application of tolerances, and the actual measured dimensions are to be compared with these:

SUBDIVISIONS OF BARREL FOR FRUITS, VEGETABLES, AND OTHER DRY COMMODITIES OTHER THAN CRANBERRIES

Dimensions	3/4 barrel (inches)	1/2 barrel (inches)	1/3 barrel (inches)
Effective diameter of head (see § 241.4)	15 1/4	13 3/8	11 5/8
Distance between heads	23 1/2	20 1/2	18
Circumference of bulge, outside measurement	58 1/2	51 1/2	45 1/4

SUBDIVISIONS OF BARREL FOR CRANBERRIES

Dimensions	3/4 barrel (inches)	1/2 barrel (inches)	1/3 barrel (inches)
Effective diameter of head (see § 241.4)	14 3/8	12 5/8	11
Distance between heads	23	20	17 1/2
Circumference of bulge, outside measurement	53 3/8	47	41 3/8

(Sec. 1, 38 Stat. 1186; 15 U.S.C. 234)

§ 241.6 Classes of barrels for tolerance application.

For the purpose of the application of tolerances, barrels for fruits, vegetables, and other dry commodities other than cranberries, are hereby divided into two classes as follows:

(a) Class 1 shall include (1) all barrels no dimension of which is in error by more than the following amounts, and (2) all barrels one or more of the dimensions of which are in error by more than the following amounts, and which in addition have no dimension in error in the opposite direction:

	Error, inches
Effective diameter of head	1/4
Distance between heads	1/4

	Error, inches
Circumference of bulge, outside measurement ..	1½

(b) Class 2 shall include all barrels at least one dimension of which is in error by more than the amounts given above, but which in addition have at least one dimension in error in the opposite direction. (This class includes all barrels mentioned in section 1 of the law in the proviso reading: "Provided, That any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel.")

(Sec. 1, 38 Stat. 1186; 15 U.S.C. 234)

§241.7 Tolerances to be allowed.

(a) The tolerances to be allowed in excess or in deficiency on the dimensions of all barrels of Class 1 shall be as follows:

	Tolerance inches
Diameter of head	¼
Effective diameter of head	¼
Distance between heads	¼
Circumference of bulge, outside measurement ..	1½
Length of stave	½

(1) If no dimension of a barrel of Class 1 is in error by more than the tolerance given above, then the barrel is within the tolerance allowed.

(2) If one or more of the dimensions of a barrel of Class 1 is in error by more than the tolerance given above, then the barrel is not within the tolerance allowed.

(b) The tolerance to be allowed in excess or in deficiency on all barrels of Class 2 shall be 1½ inches (1.5) inches, and this tolerance is to be applied to the result obtained by the application of the following rule:

(1) Having determined the errors of each dimension and given to each its proper sign (see §241.4), add the errors on the effective diameter of head and the distance between heads algebraically and multiply the result by 1.67 (or 5/3). Then add this result to the error on the circumference of bulge algebraically. If the result obtained is not greater than the tolerance given above, then the barrel is within the tolerance allowed; if the result is greater

than this tolerance, then the barrel is not within the tolerance allowed.

NOTE: To find the algebraic sum of a number of quantities having different signs, first add all those having one sign; then add all those having the opposite sign; then subtract the smaller sum from the larger, giving this result the sign of the larger quantity.

(2) [Reserved]

(c) The tolerance to be allowed in excess or in deficiency on the dimensions of all barrels for cranberries shall be as follows:

	Tolerance, inches
Diameter of head	¼
Effective diameter of head	¼
Distance between heads	¼
Circumference of bulge, outside measurement ..	1¾
Length of stave	½

(1) If no dimension of a barrel for cranberries is in error by more than the tolerance given above, then the barrel is within the tolerance allowed.

(2) If one or more of the dimensions of a barrel for cranberries is in error by more than the tolerance given above, then the barrel is not within the tolerance allowed.

(d) The tolerances to be allowed in excess or in deficiency on all subdivisions of the standard barrel for fruits, vegetables, and other dry commodities other than cranberries, and on all subdivisions of the standard barrel for cranberries, shall be the values given in the following table, and these tolerances are to be applied to the result obtained by the application of the following rule:

(1) Having determined the errors on each dimension and given to each its proper sign (see §241.5), add the errors on the effective diameter of head and the distance between heads algebraically and multiply the result by 1.67 (or 5/3). Then add this result to the error on the circumference of bulge algebraically. If the result obtained is not greater than the tolerance given in the following table for the proper subdivision, then the barrel is within the tolerance allowed; if the result is greater than this tolerance, then the barrel is not within the tolerance allowed.

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Size of subdivision	Tolerance	
	For fruits, vegetables, and other dry commodities (inches)	For cranberries (inches)
¾ barrel	1 3/8 (1.375)	1 1/4 (1.25)
½ barrel	1 1/4 (1.25)	1 1/8 (1.125)
⅓ barrel	1 1/8 (1.125)	1 (1.00)

SUBCHAPTER E—FELLOWSHIPS AND RESEARCH ASSOCIATES

PART 255—FELLOWSHIPS IN LABORATORY STANDARDIZATION AND TESTING FOR QUALIFIED CITIZENS OF OTHER AMERICAN REPUBLICS

Sec.	
255.1	Type of fellowships.
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255.4	Allowances and expenses.
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255.6	Duration of fellowships.
255.7	Official notification.

AUTHORITY: R.S. 161; sec. 1, 53 Stat. 1290; 22 U.S.C. 501.

SOURCE: 13 FR 8374, Dec. 28, 1948, unless otherwise noted.

§ 255.1 Type of fellowships.

Fellowships shall be of the combined intern-training and training-in-research type, and may include any or all of the following courses:

(a) Orientation courses consisting of lectures and conferences at the National Institute of Standards & Technology pertaining to laboratory standardization and testing.

(b) Practical laboratory training in various branches of physics, chemistry, and engineering research, under the direction of the National Institute of Standards & Technology, which will include the usual subdivisions of physics (weights and measures, heat, optics, mechanics, atomic physics, electrical measurements and radio) and also technologic applications in research and testing on metals, rubber, leather, paper, textiles, plastics, and clay and silicate products.

(c) Observation and study in such other laboratories within the continental United States as may be selected by the Director of the National Institute of Standards & Technology.

(d) Courses of instruction or research assignments supplementing the practical laboratory training, in universities or colleges selected by the Director of the National Institute of Standards & Technology.

[13 FR 8374, Dec. 28, 1948, as amended at 55 FR 38315, Sept. 18, 1990]

§ 255.2 Qualifications.

Each applicant selected for a fellowship shall be:

(a) A citizen of an American republic other than the United States;

(b) In possession of a certificate of medical examination issued by a licensed physician within 60 days of the date of application, describing the applicant's physical condition and stating that he is free from any communicable disease, physical deformity or disability that would interfere with the proper pursuit of training, research, or any other activity or work incident to the fellowship;

(c) Able to speak, read, write and understand the English language;

(d) Of good moral character and possessing intellectual ability and suitable personal qualities; and

(e) In possession of acceptable evidence that he has successfully completed the equivalent of a four-year university course in a recognized university, college or other institution of learning, with some training or experience in the field of activity which he desires to pursue. Equivalent experience may be substituted for the university training in the case of candidates who are otherwise specially well qualified.

§ 255.3 Award of fellowships.

Fellowships shall be awarded by the Director of the National Institute of Standards & Technology, with the approval of the Secretary of Commerce and the Secretary of State, or the duly authorized representative of the Secretary of State. Applications shall be transmitted to the Secretary of State by the government of the American republic of which the applicant is a citizen through the American diplomatic mission accredited to that government.

[13 FR 8374, Dec. 28, 1948, as amended at 55 FR 38315, Sept. 18, 1990]

§ 255.4 Allowances and expenses.

Allowances and expenses shall be as provided in State Department regulations given in 22 CFR Part 61, and as

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provided in Department of Commerce Administrative Order No. 202-3.¹

§ 255.5 Progress reports.

Applicants awarded fellowships under the regulations in this part shall submit written reports of progress in training and research at such intervals as the Director of the National Institute of Standards & Technology may determine.

[13 FR 8374, Dec. 28, 1948, as amended at 55 FR 38316, Sept. 18, 1990]

§ 255.6 Duration of fellowships.

Fellowships may be awarded for periods of varying length, not exceeding one 12-month period of actual training and research and may be extended for not exceeding the same periods in the manner prescribed under § 255.3 and subject to the availability of appropriations. Fellowships may be cancelled for cause by the Director of the National Institute of Standards & Technology, with the approval of the Secretary of Commerce and the Secretary of State, or the duly authorized representative of the Secretary of State.

[13 FR 8374, Dec. 28, 1948, as amended at 55 FR 38316, Sept. 18, 1990]

§ 255.7 Official notification.

Each applicant selected by the Director of the National Institute of Standards & Technology and approved by the Secretary of Commerce and the Secretary of State, or the duly authorized representative of the Secretary of State, shall be notified of his award through diplomatic channels. The notification shall state the duration and type of fellowship, outline the program of training and research, and state the allowances authorized: *Provided, however,* That the Director of the National Institute of Standards & Technology may subsequently amend the program and duration of the fellowship if in his opinion such action would be in the interest of obtaining training and research better suited to the needs and capabilities of the fellow than those prescribed in the notification. The

¹Not filed with the Office of the Federal Register.

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amount originally authorized for monthly allowances and other expenses may also be amended, if necessary, with the approval of the Secretary of Commerce and the Secretary of State, or the duly authorized representative of the Secretary of State.

[13 FR 8374, Dec. 28, 1948, as amended at 55 FR 38316, Sept. 18, 1990]

PART 256—RESEARCH ASSOCIATE PROGRAM

Sec.

- 256.1 Introduction.
- 256.2 The Research Associate Program.
- 256.3 Procedure.
- 256.4 Qualifications.
- 256.5 Duration of projects.
- 256.6 Information concerning the Research Associate Program.

AUTHORITY: 27 Stat. 395, 31 Stat. 1039; 20 U.S.C. 91.

SOURCE: 32 FR 10252, July 12, 1967, unless otherwise noted.

§ 256.1 Introduction.

This part states policies and procedures concerning the Research Associate Program at the National Institute of Standards & Technology. In the exercise of its functions as a major scientific agency of the Federal Government, the National Institute of Standards & Technology may make its facilities available to persons other than Bureau employees to work with scientists and engineers in collaborative research aimed at furthering the Nation's scientific, industrial, and economic growth. Such cooperative programs may be sponsored by professional, technical, or industrial organizations or associations. Such participants, when so sponsored, are designated "Research Associates".

§ 256.2 The Research Associate Program.

The Bureau provides its facilities, scientific competence, and technical supervision for defined scientific or technical research by a Research Associate when such research is complementary to and compatible with scientific or technical research being performed or to be undertaken by NIST under its statutory mission and authority. The Sponsors pay the salaries

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of their Research Associates and Sponsor-furnished technical assistants and secretaries of the Research Associates, if any, their travel costs, and other related expenses. Additionally, Sponsors reimburse NIST for the cost of research equipment, services, or materials obtained for the Research Associate.

[32 FR 10252, July 12, 1967, as amended at 40 FR 50707, Oct. 31, 1975]

§ 256.3 Procedure.

Arrangements for collaborative research by NIST with a Research Associate generally begin through discussions or correspondence between NIST scientists and representatives of potential sponsoring companies, trade associations or professional organizations. These preliminary steps are followed by the consummation of a Memorandum of Agreement which is signed by NIST, the sponsoring organization and the Research Associate. The agreement sets out the respective responsibilities and obligations of all parties.

§ 256.4 Qualifications.

Each candidate selected to serve as a Research Associate must be determined to be scientifically qualified by the Sponsor and by the NIST, and found by NIST to be of good moral character and to possess suitable personal qualities.

§ 256.5 Duration of projects.

The work of a Research Associate is generally conducted on a full-time basis. Typically, Research Associates are in residence at NIST for 6 to 18 months; longer-term programs may be carried on by a succession of Research Associates. Agreements provide for cancellation by any of the parties.

§ 256.6 Information concerning the Research Associate Program.

Information concerning the Research Associate Program may be obtained from the Industrial Liaison Officer, National Institute of Standards & Technology, Washington, DC 20234.

[40 FR 50707, Oct. 31, 1975]

SUBCHAPTER F—REGULATIONS GOVERNING TRAFFIC AND CONDUCT

PART 265—REGULATIONS GOVERNING TRAFFIC AND CONDUCT ON THE GROUNDS OF THE NATIONAL INSTITUTE OF STANDARDS & TECHNOLOGY, GAITHERSBURG, MARYLAND, AND BOULDER AND FORT COLLINS, COLORADO

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265.2 Applicability.
265.3 Compliance with directions.
265.4 Making or giving of false reports.
265.5 Laws of Maryland and Colorado applicable.

Subpart B—Traffic and Vehicular Regulations

- 265.11 Inspection of license and registration.
265.12 Speeding or reckless driving.
265.13 Emergency vehicles.
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265.15 Right-of-way in crosswalks.
265.16 Parking.
265.17 Parking permits.
265.18 Prohibited servicing of vehicles.
265.19 Unattended vehicles.
265.20 Towing of improperly parked vehicles.
265.21 Improper use of roads as thoroughfares.
265.22 Bicycle traffic.

Subpart C—Buildings and Grounds

- 265.31 Closing the site.
265.32 Trespassing.
265.33 Preservation of property.
265.34 Conformity with posted signs.
265.35 Nuisances.
265.36 Intoxicating beverages.
265.37 Narcotics and other drugs.
265.38 Intoxication or other impairment of function.
265.39 Weapons and explosives.
265.40 Nondiscrimination.
265.41 Gambling.
265.42 Photography for advertising or commercial purposes; advertising and soliciting.
265.43 Pets and other animals.

Subpart D—Penalties

- 265.51 Penalties—other laws.

AUTHORITY: Sec. 9, 31 Stat. 1450, as amended (15 U.S.C. 277). Applies sec. 1, 72 Stat 1711, as amended, (15 U.S.C. 278e(b)).

SOURCE: 39 FR 41170, Nov. 25, 1974, unless otherwise noted.

Subpart A—General

§ 265.1 Definitions.

As used in this part:

(a) *Site* means those grounds and facilities of the National Institute of Standards & Technology, Department of Commerce located in Montgomery County, Maryland, and in Boulder and Larimer Counties, Colorado, over which the Federal Government has acquired concurrent jurisdiction in accordance with appropriate authority.

(b) *Uniformed guard* means a designated employee appointed by the Director for purposes of carrying out the authority of a U.S. Special Policeman, as provided by 40 U.S.C. 318.

(c) *Director* means the Director of the National Institute of Standards & Technology.

[39 FR 41170, Nov. 25, 1974, as amended at 41 FR 51787, Nov. 24, 1976; 55 FR 38316, Sept. 18, 1990]

§ 265.2 Applicability.

The regulations in this part establish rules with respect to the parking and operation of motor vehicles and other activities and conduct on the site. These regulations are intended to supplement the rules and regulations regarding conduct in Part O of Subtitle A of this title and in other officially issued orders and regulations of the Department of Commerce and the National Institute of Standards & Technology

[39 FR 41170, Nov. 25, 1974, as amended at 55 FR 38316, Sept. 18, 1990]

§ 265.3 Compliance with directions.

No person shall fail or refuse to comply with any lawful order or direction of a uniformed guard in connection with the control or regulation of traffic and parking or other conduct on the site.

§ 265.4 Making or giving of false reports.

No person shall knowingly give any false or fictitious report or information to any authorized person investigating an accident or apparent violation of law or these regulations. Nothing in this section shall affect the applicability of 18 U.S.C. 1001 regarding false, fictitious or fraudulent statements or entries.

§ 265.5 Laws of Maryland and Colorado applicable.

Unless otherwise specifically provided herein, the laws of the State of Maryland and of the State of Colorado shall be applicable to the site located within those respective States. The applicability of State laws shall not, however, affect or abrogate any other Federal law or regulation applicable under the circumstances.

Subpart B—Traffic and Vehicular Regulations**§ 265.11 Inspection of license and registration.**

No person may operate any motor vehicle on the site unless he holds a current operator's license, nor may he, if operating a motor vehicle on the site, refuse to exhibit for inspection, upon request of a uniformed guard, his operator's license or proof of registration of the vehicle under his control at time of operation.

§ 265.12 Speeding or reckless driving.

(a) No person shall drive a motor vehicle on the site at a speed greater than or in a manner other than is reasonable and prudent for the particular location, given the conditions of traffic, weather, and road surface and having regard to the actual and potential hazards existing.

(b) Except when a special hazard exists that requires lower speed for compliance with paragraph (a) of this section, the speed limit on the site is 25 m.p.h., unless another speed limit has been duly posted, and no person shall drive a motor vehicle on the site in excess of the speed limit.

§ 265.13 Emergency vehicles.

No person shall fail or refuse to yield the right-of-way to an emergency vehicle when operating with siren or flashing lights.

§ 265.14 Signs.

Every driver shall comply with all posted traffic and parking signs.

§ 265.15 Right-of-way in crosswalks.

No person shall fail or refuse to yield the right-of-way to a pedestrian or bicyclist crossing a street in a marked crosswalk.

§ 265.16 Parking.

No person, unless otherwise authorized by a posted traffic sign or directed by a uniformed guard, shall stand or park a motor vehicle:

- (a) On a sidewalk;
- (b) Within an intersection or within a crosswalk;
- (c) Within 15 feet of a fire hydrant, 5 feet of a driveway or 30 feet of a stop sign or traffic control device;
- (d) At any place which would result in the vehicle being double parked;
- (e) At curbs painted yellow;
- (f) In a direction facing on-coming traffic;
- (g) In a manner which would obstruct traffic;
- (h) In a parking space marked as not intended for his use;
- (i) Where directed not to do so by a uniformed guard;
- (j) Except in an area specifically designated for parking or standing;
- (k) Except within a single space marked for such purposes, when parking or standing in an area with marked spaces;
- (l) At any place in violation of any posted sign; or
- (m) In excess of 24 hours, unless permission has been granted by the Physical Security office.

§ 265.17 Parking permits.

No person, except visitors, shall park a motor vehicle on the site without having a valid parking permit displayed on such motor vehicle in compliance with instructions of the issuing

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authority. Such permits may be revoked by the issuing authority for violation of any of the provisions of this part.

§ 265.18 Prohibited servicing of vehicles.

No person shall make nonemergency repairs on privately owned vehicles on the site.

§ 265.19 Unattended vehicles.

No person shall leave a motor vehicle unattended on the site with the engine running or a key in the ignition switch or the vehicle not effectively braked.

§ 265.20 Towing of improperly parked vehicles.

Any motor vehicle that is parked in violation of these regulations may be towed away or otherwise moved if a determination is made by a uniformed guard that it is a nuisance or hazard. A reasonable amount for the moving service and for the storage of the vehicle, if any, may be charged, and the vehicle is subject to a lien for that charge.

§ 265.21 Improper use of roads as thoroughfares.

Except as otherwise provided herein, no person shall drive a motor vehicle or bicycle onto the site for the sole purpose of using the roads of the site as a thoroughfare between roads bordering the site. This section shall not apply to bicyclists using officially approved bike paths on the site.

§ 265.22 Bicycle traffic.

No person shall ride a bicycle other than in a manner exercising due caution for pedestrian and other traffic. No person shall ride a bicycle on sidewalks or inside any building, nor shall any person park a bicycle on sidewalks or inside any building nor in a roadway or parking lot, provided, however, that these parking restrictions shall not apply to bicycles parked at bicycle racks located in these areas.

Subpart C—Buildings and Grounds

§ 265.31 Closing the site.

As determined by the Director (Director, NIST Boulder Laboratories, for

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sites in Colorado), the site may be closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of the Government's business. At such times no person shall enter the site except authorized individuals, who may be required to sign a register and display identification when requested by a uniformed guard.

[39 FR 41170, Nov. 25, 1974, as amended at 56 FR 66969, Dec. 27, 1991]

§ 265.32 Trespassing.

No person shall come onto the site other than in pursuance of official government business or other properly authorized activities.

§ 265.33 Preservation of property.

No person shall, without authorization, willfully destroy, damage, or deface any building, sign, equipment, marker, or structure, tree, flower, lawn, or other public property on the site.

§ 265.34 Conformity with posted signs.

No person shall fail or refuse to comply with officially posted signs of a prohibitory nature or with directions of a uniformed guard.

§ 265.35 Nuisances.

(a) No person shall willfully disrupt the conduct of official business on the site, or engage in disorderly conduct; nor shall any person unreasonably obstruct the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, parking lots, sidewalks, or roads.

(b) No person shall litter or dispose of rubbish except in a receptacle provided for that purpose; nor shall any person throw articles of any kind from a building or from a motor vehicle or bicycle.

§ 265.36 Intoxicating beverages.

Except as expressly authorized by the Director, the consumption or use on the site of intoxicating beverages is prohibited.

§ 265.37 Narcotics and other drugs.

The possession, sale, consumption, or use on the site of narcotic or other

drugs illegal under the laws of the State in which the particular site is situated is prohibited. The provisions of this section are not intended to preclude the applicability of any State or local laws and regulations with respect to the possession, sale, consumption, or use of narcotic or other drugs.

§ 265.38 Intoxication or other impairment of function.

No person shall enter or remain on the site while noticeably impaired by the use of intoxicating beverages or narcotics or other drugs, and any such person found on the site in such a state of impairment may be removed from the site.

§ 265.39 Weapons and explosives.

Except in connection with the conduct of official business on the site, no person other than uniformed guards specifically authorized, or other Federal, State, or local law enforcement officials so authorized, shall carry, transport, or otherwise possess on the site, firearms whether loaded or not, other dangerous or deadly weapons or materials, or explosives, either openly or concealed, without the written permission of the Director or his designee.

§ 265.40 Nondiscrimination.

No person shall discriminate against any other person because of race, creed, color, sex, or national origin, in furnishing, or by refusing to furnish to such person the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the site.

§ 265.41 Gambling.

No person shall participate on the site in games for money or other property, or in the operation of gambling devices, the conduct of lotteries or pools, or in the selling or purchasing of numbers tickets, or the taking or placing of bets.

§ 265.42 Photography for advertising or commercial purposes; advertising and soliciting.

(a) Except as otherwise provided herein or where security regulations would preclude, photographs may be taken in entrances, lobbies, foyers, cor-

ridors, and auditoriums without prior approval. Photography for advertising and commercial purposes may be conducted only with the written permission of the Chief, Public Affairs Division of the National Institute of Standards and Technology (Public Affairs Officer for Boulder for sites in Colorado,) provided, however, that this shall not apply to photography for purposes of civic promotion.

(b) Commercial advertisements and other material which are not directly pertinent or applicable to NIST employees but which nevertheless may be of interest or benefit to them may, with the approval of the Director of Administration (Executive Office, Boulder, for sites in Colorado), be placed in an appropriate location and made available to employees who visit that area. Except with approval as provided herein, no person shall distribute commercial advertising literature or engage in commercial soliciting on the site.

[39 FR 41170, Nov. 25, 1974, as amended at 55 FR 38316, Sept. 18, 1990; 56 FR 66969, Dec. 27, 1991]

§ 265.43 Pets and other animals.

Except in connection with the conduct of official business on the site or with the approval of the Associate Director for Administration (Executive Officer, IBS/Boulder, for sites in Colorado), no person shall bring upon the site any cat, dog, or other animal, provided, however, that blind persons may have the use of seeing eye dogs.

Subpart D—Penalties

§ 265.51 Penalties—other laws.

Except with respect to the laws of the State of Maryland and the State of Colorado assimilated by § 265.5 or otherwise, whoever shall be found guilty of violating these regulations is subject to a fine of not more than \$50 or imprisonment of not more than 30 days, or both (40 U.S.C. 318c). Except as expressly provided in this part, nothing contained in these regulations shall be construed to abrogate any other Federal laws or regulations, or any State and local laws and regulations applicable to the area in which the site is situated.

SUBCHAPTER G—NATIONAL CONSTRUCTION SAFETY TEAMS

PART 270—NATIONAL CONSTRUCTION SAFETY TEAMS

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- 270.300 Scope.
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- 270.310 Evidence collected by investigation participants who are not NIST employees.
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- 270.320 Entry and inspection of site where a building failure has occurred.
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270.323 Requests for permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.
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- 270.330 Moving and preserving evidence.

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- 270.340 Information created by investigation participants who are not NIST employees.

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- 270.350 Freedom of Information Act.
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270.352 Public safety information

AUTHORITY: Pub. L. 107-231, 116 Stat. 1471 (15 U.S.C. 7301 *et seq.*).

SOURCE: 68 FR 4694, Jan. 30, 2003, unless otherwise noted.

Subpart A—General

§ 270.1 Description of rule; purpose; applicability.

(a) The National Construction Safety Team Act (the Act) (Pub. L. 107-231) provides for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life.

(b)(1) The purpose of the Act is to provide for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted

in substantial loss of life or that posed significant potential of substantial loss of life. The role of NIST in implementing the Act is to understand the factors contributing to the building failure and to develop recommendations for improving national building and fire model codes, standards, and practices. To do this, the Teams produce technical reports containing data, findings, and recommendations for consideration by private sector bodies responsible for the affected national building and fire model code, standard, or practice. While NIST is an active participant in many of these organizations, NIST's recommendations are one of many factors considered by these bodies. NIST is not now and will not become a participant in the processes and adoption of practices, standards, or codes by state or local regulatory authorities.

(2) It is not NIST's role to determine whether a failed building resulted from a criminal act, violated any applicable federal requirements or state or local code or regulatory requirements, or to determine any culpability associated therewith. These are matters for other federal, state, or local authorities, who enforce their regulations.

(c) This part is applicable to the establishment and deployment of Teams and the conduct of investigations under the Act.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 66704, Nov. 28, 2003; 69 FR 33571, June 16, 2004]

§ 270.2 Definitions used in this part.

The following definitions are applicable to this part:

Act. The National Construction Safety Team Act (Pub. L. 107-231, 116 Stat. 1471).

Advisory Committee. The National Construction Safety Team Advisory Committee.

Credentials. Credentials issued by the Director, identifying a person as a member of a National Construction Safety Team, including photo identification and other materials, including badges, deemed appropriate by the Director.

Director. The Director of the National Institute of Standards and Technology.

Evidence. Any document, record, book, artifact, building component, material, witness testimony, or physical evidence collected pursuant to an investigation.

General Counsel. The General Counsel of the U.S. Department of Commerce.

Investigation participant. Any person participating in an investigation under the Act, including all Team members, other NIST employees participating in the investigation, private sector experts, university experts, representatives of professional organizations, employees of other Federal, state, or local government entities, and other contractors.

Lead Investigator. A Team member who is a NIST employee and is designated by the Director to lead a Team.

NIST. The National Institute of Standards and Technology.

Team. A team established by the Director and deployed to conduct an investigation under the Act.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 66704, Nov. 28, 2003]

Subpart B—Establishment and Deployment of Teams

SOURCE: 68 FR 66704, Nov. 28, 2003, unless otherwise noted.

§ 270.100 General.

(a) Based on prior NIST experience, NIST expects that the Director will establish and deploy a Team to conduct an investigation at a frequency of approximately once per year or less.

(b) For purposes of this part, a building failure may involve one or more of the following: structural system, fire protection (active or passive) system, air-handling system, and building control system. Teams established under the Act and this part will investigate these technical causes of building failures and will also investigate the technical aspects of evacuation and emergency response procedures, including multiple-occupant behavior or evacuation (egress or access) system, emergency response system, and emergency communication system.

(c) For purposes of this part, the number of fatalities considered to be

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“substantial” will depend on the nature of the event, its impact, its unusual or unforeseen character, historical norms, and other pertinent factors.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.101 Preliminary reconnaissance.

(a) To the extent the Director deems it appropriate, the Director may conduct a preliminary reconnaissance at the site of a building failure. The Director may establish and deploy a Team to conduct the preliminary reconnaissance, as described in § 270.102 of this subpart, or may have information gathered at the site of a building failure without establishing a Team.

(b) If the Director establishes and deploys a Team to conduct the preliminary reconnaissance, the Team shall perform all duties pursuant to section 2(b)(2) of the Act, and may perform all activities that Teams are authorized to perform under the Act and these procedures, including gathering and preserving evidence. At the completion of the preliminary reconnaissance, the Team will report its findings to the Director in a timely manner. The Director may either determine that the Team should conduct further investigation, or may direct the Team to prepare its public report immediately.

(c) If the preliminary reconnaissance is conducted without the establishment of a Team, the leader of the initial assessment will report his/her findings to the Director in a timely manner. The Director will decide whether to establish a Team and conduct an investigation using the criteria established in § 270.102 of this subpart.

§ 270.102 Conditions for establishment and deployment of a Team.

(a) The Director may establish a Team for deployment after an event that caused the failure of a building or buildings that resulted in substantial loss of life or posed significant potential for substantial loss of life. The Director will determine the following prior to deploying a Team:

(1) The event was any of the following:

(i) A major failure of one or more buildings or types of buildings due to

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an extreme natural event (earthquake, hurricane, tornado, flood, etc.);

(ii) A fire that resulted in a building failure of the building of origin and/or spread beyond the building of origin.

(iii) A major building failure at significantly less than its design basis, during construction, or while in active use; or

(iv) An act of terrorism or other event resulting in a Presidential declaration of disaster and activation of the National Response Plan; and

(2) A fact-finding investigation of the building performance and emergency response and evacuation procedures will likely result in significant and new knowledge or building code revision recommendations needed to reduce or mitigate public risk and economic losses from future building failures.

(b) In making the determinations pursuant to paragraph (a) of this section, the Director will consider the following:

(1) Whether sufficient financial and personnel resources are available to conduct an investigation; and

(2) Whether an investigation of the building failure warrants the advanced capabilities and experiences of a Team; and

(3) If the technical cause of the failure is readily apparent, whether an investigation is likely to result in relevant knowledge other than reaffirmation of the technical cause; and

(4) Whether deployment of a Team will substantially duplicate local or state resources equal in investigatory and analytical capability and quality to a Team; and

(5) Recommendations resulting from a preliminary reconnaissance of the site of the building failure.

(c) To the maximum extent practicable, the Director will establish and deploy a Team within 48 hours after such an event.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.103 Publication in the Federal Register.

The Director will promptly publish in the FEDERAL REGISTER notice of the establishment of each Team.

§ 270.104 Size and composition of a team.

(a) *Size of a Team.* The size of a Team will depend upon the likely scope and complexity of the investigation. A Team may consist of five or less members if the investigation is narrowly focused, or a Team may consist of twenty or more members divided into groups if the breadth of the investigation spans a number of technical issues. In addition, Teams may be supported by others at NIST, in other federal agencies, and in the private sector, who may conduct supporting experiments, analysis, interviews witnesses, and/or examine the response of first responders, occupants, etc.

(b) *Composition of a Team.* (1) A Team will be composed of individuals selected by the Director and led by a Lead Investigator designated by the Director.

(2) The Lead Investigator will be a NIST employee, selected based on his/her technical qualifications, ability to mobilize and lead a multi-disciplinary investigative team, and ability to deal with sensitive issues and the media.

(3) Team members will include at least one employee of NIST and will include experts who are not employees of NIST, who may include private sector experts, university experts, representatives of professional organizations with appropriate expertise, and appropriate Federal, State, or local officials.

(4) Team members who are not Federal employees will be Federal Government contractors.

(5) Teams may include members who are experts in one or more of the following disciplines: civil, structural, mechanical, electrical, fire, forensic, safety, architectural, and materials engineering, and specialists in emergency response, human behavior, and evacuation.

(c) *Duration of a Team.* A Team's term will end 3 months after the Team's final public report is published, but the term may be extended or terminated earlier by the Director.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.105 Duties of a Team.

(a) A Team's Lead Investigator will organize, conduct, and control all technical aspects of the investigation, up to and including the completion of the final investigation public report and any subsequent actions that may be required. The Lead Investigator has the responsibility and authority to supervise and coordinate all resources and activities of NIST personnel involved in the investigation. The Lead Investigator may be the Contracting Officer's Technical Representative (COTR) on any contract for service on the Team or in support of the Team; while the COTR remains the technical representative of the Contracting Officer for purposes of contract administration, the Lead Investigator will oversee all NIST personnel acting as COTRs for contracts for service on the Team or in support of the Team. The Lead Investigator's duties will terminate upon termination of the Team. The Lead Investigator will keep the Director and the NCST Advisory Committee informed about the status of investigations.

(b) A Team will:

(1) Establish the likely technical cause or causes of the building failure;

(2) Evaluate the technical aspects of evacuation and emergency response procedures;

(3) Recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to paragraphs (b)(1) and (b)(2) of this section;

(4) Recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation; and

(5) Not later than 90 days after completing an investigation, issue a public report in accordance with § 270.205 of this subpart.

(c) In performing these duties, a Team will:

(1) Not interfere unnecessarily with services provided by the owner or operator of the buildings, building components, materials, artifacts, property, records, or facility;

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(2) Preserve evidence related to the building failure consistent with the ongoing needs of the investigation;

(3) Preserve evidence related to a criminal act that may have caused the building failure;

(4) Not impede and coordinate its investigation with any search and rescue efforts being undertaken at the site of the building failure;

(5) Coordinate its investigation with qualified researchers who are conducting engineering or scientific research (including social science) relating to the building failure;

(6) Cooperate with State and local authorities carrying out any activities related to a Team's investigation;

(d) In performing these duties, in a manner consistent with the procedures set forth in this part, a Team may:

(1) Enter property where a building failure being investigated has occurred and take necessary, appropriate, and reasonable action to carry out the duties described in paragraph (b) of this section;

(2) Inspect any record, process, or facility related to the investigation during reasonable hours;

(3) Inspect and test any building components, materials, and artifacts related to the building failure; and

(4) Move records, components, materials, and artifacts related to the building failure.

§ 270.106 Conflicts of interest related to service on a Team.

(a) Team members who are not Federal employees will be Federal Government contractors.

(b) Contracts between NIST and Team members will include appropriate provisions to ensure that potential conflicts of interest that arise prior to award or during the contract are identified and resolved.

Subpart C—Investigations

SOURCE: 68 FR 66704, Nov. 28, 2003, unless otherwise noted.

§ 270.200 Technical conduct of investigation.

(a) *Preliminary reconnaissance.* (1) An initial assessment of the event, including an initial site reconnaissance, if

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deemed appropriate by the Director, will be conducted. This assessment will be done within a few hours of the event, if possible. The Director may establish and deploy a Team to conduct the preliminary reconnaissance, using the criteria established in § 270.102 of this part, or may have information gathered at the site of a building failure without establishing a Team.

(2) If the Director establishes and deploys a Team to conduct the preliminary reconnaissance, the Team shall perform all duties pursuant to section 2(b)(2) of the Act, and may perform all activities that Teams are authorized to perform under the Act and these procedures, with a focus on gathering and preserving evidence, inspecting the site of the building failure, and interviewing of eyewitnesses, survivors, and first responders. Collections of evidence by a Team established for preliminary reconnaissance are investigatory in nature and will not be considered research for any purpose. At the completion of the preliminary reconnaissance, the Team will report its findings to the Director in a timely manner. The Director may either determine that the Team should conduct further investigation, or may direct the Team to immediately prepare the public report as required by section 8 of the Act.

(3) If the preliminary reconnaissance is conducted without the establishment of a Team, the leader of the initial assessment will report his/her findings to the Director in a timely manner. The Director will decide whether to establish a team and conduct an investigation using the criteria established in § 270.102 of this part.

(b) *Investigation plan.* (1) If the Director establishes a Team without ordering preliminary reconnaissance, establishes a Team after preliminary reconnaissance, or establishes a Team to conduct preliminary reconnaissance and subsequently determines that further investigation is necessary prior to preparing the public report required by section 8 of the Act, the Director, or his/her designee, will formulate a plan that includes:

(i) A brief description of the building failure;

(ii) The criteria upon which the decision to conduct the investigation was based;

(iii) Supporting effort(s) by other organizations either in place or expected in the future;

(iv) Identification of the Lead Investigator and Team members;

(v) The technical investigation plan;

(vi) Site, community, and local, state, and Federal agency liaison status; and

(vii) Estimated duration and cost.

(2) To the extent practicable, the Director will include the most appropriate expertise on each Team from within NIST, other government agencies, and the private sector. The NCST Advisory Committee may be convened as soon as feasible following the launch of an investigation to provide the Director the benefit of its advice on investigation Team activities.

(c) *Investigation.* (1) The duration of an investigation that proceeds beyond preliminary reconnaissance will be as little as a few months to as long as a few years depending on the complexity of the event.

(2) Tasks that may be completed during investigations that proceed beyond preliminary reconnaissance include:

(i) Consult with experts in building design and construction, fire protection engineering, emergency evacuation, and members of other investigation teams involved in the event to identify technical issues and major hypotheses requiring investigation.

(ii) Collect data from the building(s) owner and occupants, local authorities, and contractors and suppliers. Such data will include relevant building and fire protection documents, records, video and photographic data, field data, and data from interviews and other oral and written accounts from building occupants, emergency responders, and other witnesses.

(iii) Collect and analyze physical evidence, including material samples and other forensic evidence, to the extent they are available.

(iv) Determine the conditions in the building(s) prior to the event, which may include the materials of construction and contents; the location, size, and condition of all openings that may have affected egress, entry, and fire

conditions (if applicable); the installed security and/or fire protection systems (if applicable); the number of occupants and their approximate locations at the time of the event.

(v) Reconstruct the event within the building(s) using computer models to identify the most probable technical cause (or causes) of the failure and the uncertainty(ies) associated with it (them). Such models may include initial damage, blast effects, pre-existing deficiencies and phenomena such as fire spread, smoke movement, tenability, occupant behavior and response, evacuation issues, cooperation of security and fire protection systems, and building collapse.

(vi) Conduct small and full-scale experiments to provide additional data and verify the computer models being used.

(vii) Examine the impact of alternate building/system/equipment design and use on the survivability of the building and its occupants.

(viii) Analyze emergency evacuation and occupant responses to better understand the actions of the first responders and the impediments to safe egress encountered by the occupants.

(ix) Analyze the relevant building practices, including code adoption and enforcement practices, to determine the extent to which the circumstances that led to this building failure have regional or national implications.

(x) Identify specific areas in building and fire codes, standards, and building practices that may warrant revisions based on investigation findings.

(xi) Identify research and other appropriate actions required to help prevent future building failures.

(d) If a disaster site contains multiple building failures, the Director will narrow the scope of the investigation plan taking into account available financial and personnel resources, and giving priority to failures offering the most opportunity to advance the safety of building codes. The Director may consider the capabilities of NIST in establishing priorities.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.201

§ 270.201 Priority of investigation.

(a) *General.* Except as provided in this section, a Team investigation will have priority over any other investigation of any other Federal agency.

(b) *Criminal acts.* (1) If the Attorney General, in consultation with the Director, determines, and notifies the Director that circumstances reasonably indicate that the building failure being investigated by a Team may have been caused by a criminal act, the Team will relinquish investigative priority to the appropriate law enforcement agency.

(2) If a criminal investigation of the building failure being investigated by a Team is initiated at the state or local level, the Team will relinquish investigative priority to the appropriate law enforcement agency.

(3) The relinquishment of investigative priority by the Team will not otherwise affect the authority of the Team to continue its investigation under the Act.

(c) *National Transportation Safety Board.* If the National Transportation Safety Board is conducting an investigation related to an investigation of a Team, the National Transportation Safety Board investigation will have priority over the Team investigation. Such priority will not otherwise affect the authority of the Team to continue its investigation under the Act.

(d) Although NIST will share any evidence of criminal activity that it obtains in the course of an investigation under the Act with the appropriate law enforcement agency, NIST will not participate in the investigation of any potential criminal activity.

§ 270.202 Coordination with search and rescue efforts.

NIST will coordinate its investigation with any search and rescue or search and recovery efforts being undertaken at the site of the building failure, including FEMA urban search and rescue teams, local emergency management agencies, and local emergency response groups. Upon arrival at a disaster site, the Lead Investigator will identify the lead of the search and rescue operations and will work closely

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with that person to ensure coordination of efforts.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.203 Coordination with Federal, State, and local entities.

NIST will enter into Memoranda of Understanding with Federal, State, and local entities, as appropriate, to ensure the coordination of investigations.

§ 270.204 Provision of additional resources and services needed by a team.

The Director will determine the appropriate resources that a Team will require to carry out its investigation and will ensure that those resources are available to the Team.

§ 270.205 Reports.

(a) Not later than 90 days after completing an investigation, a Team shall issue a public report which includes:

(1) An analysis of the likely technical cause or causes of the building failure investigated;

(2) Any technical recommendations for changes to or the establishment of evacuation or emergency response procedures;

(3) Any recommended specific improvements to building standards, codes, and practices; and

(4) Recommendations for research and other appropriate actions needed to help prevent future building failures.

(b) A Team that is directed to prepare its public report immediately after conducting a preliminary reconnaissance will issue a public report not later than 90 days after completion of the preliminary reconnaissance. The public report will be in accordance with paragraph (a) of this section, but will be summary in nature.

(c) A Team that continues to conduct an investigation after conducting a preliminary reconnaissance will issue a public report not later than 90 days after completing the investigation in accordance with paragraph (a) of this section.

§ 270.206 Public briefings and requests for information.

(a) NIST will establish methods to provide updates to the public on its planning and progress of an investigation. Methods may include:

- (1) A public Web site;
- (2) Mailing lists, to include an emphasis on e-mail;
- (3) Semi-annual written progress reports;
- (4) Media briefings; and
- (5) Public meetings.

(b) Requests for information on the plans and conduct of an investigation should be submitted to the NIST Public and Business Affairs Division.

Subpart D—Collection and Preservation of Evidence; Information Created Pursuant to an Investigation; and Protection of Information**§ 270.300 Scope.**

During the course of an investigation conducted pursuant to the Act, evidence will be collected, and information will be created by the Team, NIST, and other investigation participants. This subpart sets forth the policy and procedures for the collection, preservation, and protection of evidence obtained and information created pursuant to an investigation.

§ 270.301 Policy.

Evidence collected and information created by Team members and all other investigation participants will be collected, preserved, and protected in accordance with the procedures set forth in this subpart.

COLLECTION OF EVIDENCE

§ 270.310 Evidence collected by investigation participants who are not NIST employees.

Upon receipt of evidence pursuant to an investigation under the Act, each investigation participant who is not a NIST employee shall:

- (a) As soon as practicable, transfer the original evidence to NIST, and retain a copy of the evidence only if necessary to carry out their duties under the investigation; and

(b) For any evidence that cannot reasonably be duplicated, retain the evidence in accordance with NIST procedures for preserving evidence as described in § 270.330 of this subpart, and upon completion of the duties for which retention of the evidence is necessary, transfer the evidence to NIST.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003]

§ 270.311 Collection of evidence.

(a) In the course of an investigation, evidence normally will be collected following the procedures described in §§ 270.312 through 270.315 of this subpart.

(b) Upon a written showing by the Lead Investigator of urgent and compelling reasons to believe that evidence may be destroyed, or that a witness may become unavailable, were the procedures described in §§ 270.312 through 270.314 of this subpart followed, the Director, with the concurrence of the General Counsel, may immediately issue a subpoena for such evidence or testimony, pursuant to § 270.315 of this subpart.

§ 270.312 Voluntary submission of evidence.

After the Director establishes and deploys a Team, members of the public are encouraged to voluntarily submit to the Team non-privileged evidence that is relevant to the subject matter of the pending investigation.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003]

§ 270.313 Requests for evidence.

(a) After the Director establishes and deploys a Team, the Lead Investigator, or their designee, may request the testimony of any person by deposition, upon oral examination or written questions, and may request documents or other physical evidence without seeking prior approval of the Director.

(b) Requests for responses to written questions will be made in writing and shall include:

- (1) A statement that the request is made to gather evidence necessary to an investigation being conducted under the Act;

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(2) Identification of the person whose responses are sought;

(3) Contact information for the person to whom the responses should be submitted;

(4) The date and time by which the responses are requested;

(5) A statement that the questions for which responses are sought are attached; and

(6) Contact information for the person to whom questions or problems regarding the request should be addressed.

(c) Requests for documents or other physical evidence will be made in writing and shall include:

(1) A statement that the request is made to gather evidence necessary to an investigation being conducted under the Act;

(2) A description of the documents or other physical evidence sought;

(3) Identification of the person or persons to whom the request is made;

(4) A request that each person to whom the request is directed produce and permit inspection and copying of the documents and physical evidence in the possession, custody, or control of that person at a specific time and place; and

(5) Contact information for the person to whom questions or problems regarding the request should be addressed.

(d) Requests for witness testimony will be made in writing and shall include:

(1) The name of the person whose testimony is requested;

(2) The date, time, and place of the deposition;

(3) A statement that the person whose testimony is requested may be accompanied by an attorney; and

(4) Contact information for the person to whom questions or problems regarding the request should be addressed.

(e) Collections of evidence under paragraphs (b), (c), and (d) of this section are investigatory in nature and will not be considered research for any purpose.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 66707, Nov. 28, 2003]

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§ 270.314 Negotiations.

The Lead Investigator may enter into discussions with appropriate parties to address problems identified with the submission of evidence requested pursuant to § 270.313 of this subpart. Should negotiations fail to result in the submission of such evidence, a subpoena may be issued pursuant to § 270.315.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003]

§ 270.315 Subpoenas.

(a) *General.* Subpoenas requiring the attendance of witnesses or the production of documentary or physical evidence for the purpose of taking depositions or at a hearing may be issued only under the signature of the Director with the concurrence of the General Counsel, but may be served by any person designated by the Counsel for NIST on behalf of the Director.

(b) *Determination whether to issue a subpoena.* In determining whether to issue a subpoena, the Director will consider the following factors:

(1) Whether the testimony, documentary, or physical evidence is required for an investigation being conducted pursuant to the Act;

(2) Whether the evidence sought is relevant to the purpose of the investigation;

(3) Whether NIST already has the evidence in its possession; and

(4) Whether the evidence required is described with specificity.

(c) *Contents of a subpoena.* A subpoena issued by the Director will contain the following:

(1) A statement that the subpoena is issued by the Director pursuant to section 5 of the Act;

(2) A description of the documents or physical evidence or the subject matter of the testimony required by the subpoena;

(3) A command that each person to whom it is directed attend and give testimony or produce and permit inspection and copying of designated books, documents or physical evidence in the possession, custody or control of that person at a time and place specified in the subpoena;

(4) A statement that any person whose testimony is required by the subpoena may be accompanied by an attorney; and

(5) The signature of the Director.

(d) *Service of a subpoena.* Service of a subpoena will be effected:

(1) By personal service upon the person or agent of the person whose testimony is required or who is in charge of the documentary or physical evidence required; or

(2) By certified mail, return receipt requested, or delivery to the last known residence or business address of such person or agent; or

(3) Where personal service, mailing, or delivery has been unsuccessful, service may also be effected by publication in the FEDERAL REGISTER.

(e) *Witness fees.* Witnesses will be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States.

(f) *Failure to obey a subpoena.* If a person disobeys a subpoena issued by the Director under the Act, the Attorney General, acting on behalf of the Director, may bring civil action in a district court of the United States to enforce the subpoena. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003; 68 FR 66707, Nov. 28, 2003]

§ 270.316 Public hearings.

(a) During the course of an investigation by a Team, if the Director considers it to be in the public interest, NIST may hold a public hearing for the purposes of gathering testimony from witnesses and informing the public on the progress of the investigation.

(b) Should NIST plan to hold a public hearing, NIST will publish a notice in the FEDERAL REGISTER, setting forth the date, time, and place of the hearing, and procedures for members of the public wishing to speak at the hearing. In addition, witnesses may be subpoenaed to provide testimony at a public hearing, in accordance with § 270.315 of this subpart.

(c) The Director, or his designee, will preside over any public hearing held pursuant to this section.

ENTRY AND INSPECTION

§ 270.320 Entry and inspection of site where a building failure has occurred.

When the Director establishes and deploys a Team, the Team members will be issued notices of inspection authority to enter and inspect the site where the building failure has occurred.

§ 270.321 Entry and inspection of property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) In the course of an investigation, entry and inspection of property where building components, materials, artifacts and records with respect to a building failure are located normally will be conducted following the procedures described in §§ 270.322 through 270.325 of this subpart.

(b) Upon a written showing by the Lead Investigator of urgent and compelling reasons to believe that building components, materials, artifacts or records located on a particular property may be destroyed were the procedures described in §§ 270.322 through 270.324 of this subpart followed, the Director, with the concurrence of the General Counsel may immediately issue a notice of inspection authority for such property, pursuant to § 270.325 of this subpart.

§ 270.322 Voluntary permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

After the Director establishes and deploys a Team, members of the public are encouraged to voluntarily permit Team members to enter property where building components, materials, artifacts, and records with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.

§ 270.323

§ 270.323 Requests for permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) After the Director establishes and deploys a Team, the Lead Investigator or their designee may request permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.

(b) Requests for permission to enter and inspect such property will be made in writing and shall include:

(1) The name and title of the building owner, operator, or agent in charge of the building;

(2) If appropriate, the name of the building to be inspected;

(3) The address of the building to be inspected;

(4) The date and time of the inspection;

(5) If appropriate, a description of particular items to be inspected; and

(6) Contact information for the person to whom questions or problems regarding the request should be addressed.

§ 270.324 Negotiations.

The Lead Investigator may enter into discussions with appropriate parties to address problems identified with the goal of obtaining the permission requested pursuant to § 270.323 of this subpart.

§ 270.325 Notice of authority to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) *General.* In investigating a building failure pursuant to the Act, any member of a Team, or any other person authorized by the Director to support a Team, on display of written notice of inspection authority provided by the Director with concurrence of the General Counsel and appropriate credentials, may

(1) Enter property where a building failure being investigated has occurred, or where building components, mate-

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rials, and artifacts with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team;

(2) During reasonable hours, inspect any record (including any design, construction, or maintenance record), process, or facility related to the investigation;

(3) Inspect and test any building components, materials, and artifacts related to the building failure; and

(4) Move any record, component, material and artifact as provided by this part.

(b) *Conduct of inspection, test, or other action.* An inspection, test, or other action taken by a Team pursuant to section 4 of the Act will be conducted in a way that does not interfere unnecessarily with services provided by the owner or operator of the building components, materials, or artifacts, property, records, process, or facility, and to the maximum extent feasible, preserves evidence related to the building failure, consistent with the ongoing needs of the investigation.

(c) *Determination whether to issue a notice of inspection authority.* In determining whether to issue a notice of inspection authority, the Director will consider whether the specific entry and inspection is reasonable and necessary for the Team to carry out its duties under the Act.

(d) *Notice of inspection authority.* Notice of inspection authority will be made in writing and shall include:

(1) A statement that the notice of inspection authority is issued pursuant to section 4 of the Act;

(2) The name and title of the building owner, operator, or agent in charge of the building;

(3) If appropriate, the name of the building to be inspected;

(4) The address of the building to be inspected;

(5) The date and time of the inspection;

(6) If appropriate, a description of particular items to be inspected; and

(7) The signature of the Director.

(e) *Refusal of entry on to property.* If upon being presented with a notice of inspection by any member of a Team,

or any other person authorized by the Director, the owner, operator, or agent in charge of the building or property being inspected refuses to allow entry or inspection, the Director may seek the assistance of the Department of Justice to obtain a warrant or other authorized judicial order enabling entry on to the property.

PRESERVATION OF EVIDENCE

§ 270.330 Moving and preserving evidence.

(a) A Team and NIST will take all necessary steps in moving and preserving evidence obtained during the course of an investigation under the Act to ensure that such evidence is preserved.

(b) In collecting and preserving evidence in the course of an investigation under the Act, a Team and NIST will:

(1) Maintain records to ensure that each piece of evidence is identified as to its source;

(2) Maintain and document an appropriate chain of custody for each piece of evidence;

(3) Use appropriate means to preserve each piece of evidence; and

(4) Ensure that each piece of evidence is kept in a suitably secure facility.

(c) If a Federal law enforcement agency suspects and notifies the Director that a building failure being investigated by a Team under the Act may have been caused by a criminal act, the Team, in consultation with the Federal law enforcement agency, will take necessary actions to ensure that evidence of the criminal act is preserved and that the original evidence or copies, as appropriate, are turned over to the appropriate law enforcement authorities.

INFORMATION CREATED PURSUANT TO AN INVESTIGATION

§ 270.340 Information created by investigation participants who are not NIST employees.

Unless requested sooner by the Lead Investigator, at the conclusion of an investigation, each investigation participant who is not a NIST employee shall transfer any original information they created pursuant to the investigation to NIST. An investigation participant may retain a copy of the informa-

tion for their records but may not use the information for purposes other than the investigation, nor may they release, reproduce, distribute, or publish any information first developed pursuant to the investigation, nor authorize others to do so, without the written permission of the Director or their designee. Pursuant to 15 U.S.C. 281a, no such information may be admitted or used as evidence in any suit or action for damages arising out of any matter related to the investigation.

PROTECTION OF INFORMATION

§ 270.350 Freedom of Information Act.

As permitted by section 7(b) of the Act, the following information will not be released:

(a) Information described by section 552(b) of Title 5, United States Code, or protected from disclosure by any other law of the United States; and

(b) Copies of evidence collected, information created, or other investigation documents submitted or received by NIST, a Team, or any other investigation participant, until the final investigation report is issued.

§ 270.351 Protection of voluntarily submitted information.

Notwithstanding any other provision of law, a Team, NIST, any investigation participant, and any agency receiving information from a Team, NIST, or any other investigation participant, will not disclose voluntarily provided safety-related information if that information is not directly related to the building failure being investigated and the Director finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

§ 270.352 Public safety information.

A Team, NIST, and any other investigation participant will not publicly release any information it receives in the course of an investigation under the Act if the Director finds that the disclosure might jeopardize public safety.

Subch. H-I

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SUBCHAPTERS H-I [RESERVED]

SUBCHAPTER J—ACCREDITATION AND ASSESSMENT PROGRAMS

PART 280—FASTENER QUALITY

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AUTHORITY: 15 U.S.C. 5401 *et seq.*; Pub. L. 101-592, 104 Stat. 2943, as amended by Pub. L. 104-113, 110 Stat. 775; Pub. L. 105-234, 112 Stat. 1536; and Pub. L. 106-34, 113 Stat. 118.

SOURCE: 61 FR 50558, Sept. 26, 1996, unless otherwise noted.

Subpart A—General

§ 280.1 Description of rule/Delegation of authority.

(a) Description of rule. The Fastener Quality Act (the Act) (15 U.S.C. 5401 *et seq.*, as amended by Public Law 104-113, Public Law 105-234, and Public Law 106-34):

(1) Protects against the sale of mislabeled, misrepresented, and counterfeit fasteners; and

(2) Eliminates unnecessary requirements.

(b) Delegations of authority. The Director, National Institute of Standards and Technology has authority to promulgate regulations in this part regarding certification and accreditation. The Secretary of Commerce has delegated concurrent authority to amend the regulations regarding enforcement of the Act, as contained in subpart C of this part, to the Under Secretary for Export Administration. The Secretary of Commerce has also delegated concurrent authority to amend the regulations regarding record of insignia, as contained in subpart D of this part, to the Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office.

[65 FR 39801, June 28, 2000]

§ 280.2

§ 280.2 Definitions used in this subpart.

In addition to the definitions provided in 15 U.S.C. 5402, the following definitions are applicable to this part:

Abandonment of the Application. The application for registration of a trademark on the Principal Register is no longer pending at the United States Patent and Trademark Office.

Act. The Fastener Quality Act (15 U.S.C. 5401 *et seq.*, as amended by Pub. L. 104-113, Pub. L. 105-234, and Public Law 106-34).

Administrative law judge (ALJ). The person authorized to conduct hearings in administrative enforcement proceedings brought under the Act.

Assistant Secretary. The Assistant Secretary for Export Enforcement, Bureau of Export Administration.

Department. The United States Department of Commerce, specifically, the Bureau of Export Administration, NIST and the Patent and Trademark Office.

Director, NIST. The Director of the National Institute of Standards and Technology.

Director, USPTO. The Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office.

Fastener Insignia Register. The register of recorded fastener insignias maintained by the Director.

Final decision. A decision or order assessing a civil penalty or otherwise disposing of or dismissing a case, which is not subject to further review under this part, but which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Initial decision. A decision of the administrative law judge which is subject to review by the Under Secretary for Export Administration, but which becomes the final decision of the Department in the absence of such an appeal.

Party. The Department and any person named as a respondent under this part.

Principal Register. The register of trademarks established under 15 U.S.C. 1051.

Respondent. Any person named as the subject of a charging letter, proposed

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charging letter, or other order proposed or issued under this part.

Revisions includes changes made to existing ISO/IEC Guides or other documents, and redesignations of those Guides or documents.

Under Secretary. The Under Secretary for Export Administration, United States Department of Commerce.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39801, June 28, 2000]

Subpart B—Petitions, Affirmations, and Laboratory Accreditation

SOURCE: 65 FR 39801, June 28, 2000, unless otherwise noted.

§ 280.101 Petitions for approval of documents.

(a) *Certification.* (1) A person publishing a document setting forth guidance or requirements for the certification of manufacturing systems as fastener quality assurance systems by an accredited third party may petition the Director, NIST, to approve such document for use as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)).

(2) Petitions should be submitted to: FQA Document Certification, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(3) The Director, NIST, shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 62, including revisions from time to time. A petition shall contain sufficient information to allow the Director, NIST, to make this determination.

(b) *Accreditation.* (1) A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit third parties described in paragraph (a) of this section may petition the Director, NIST, to approve such document for use as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)).

(2) Petitions should be submitted to: FQA Document Certifications, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(3) The Director, NIST, shall approve such petition if the document provides equal or greater rigor and reliability as

compared to ISO/IEC Guide 61, including revisions from time to time. A petition shall contain sufficient information to allow the Director, NIST, to make this determination.

(c) *Laboratory Accreditation.* (1) A person publishing a document setting forth guidance or requirements for the accreditation of laboratories may petition the Director, NIST, to approve such document for use as described in section 3(1)(A) of the Act (15 U.S.C. 5402(1)(A)).

(2) Petitions should be submitted to: FQA Document Certifications, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(3) The Director, NIST, shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 25, including revisions from time to time. A petition shall contain sufficient information to allow the Director, NIST, to make this determination.

(d) *Approval of Accreditation Bodies.* (1) A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit laboratories may petition the Director, NIST, to approve such document for use as described in section 3(1)(B) of the Act (15 U.S.C. 5402(1)(B)).

(2) Petitions should be submitted to: FQA Document Certifications, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(3) The Director, NIST, shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 58, including revisions from time to time. A petition shall contain sufficient information to allow the Director, NIST, to make this determination.

(e) Electronic copies of ISO/IEC Guides may be purchased through the American National Standards Institute (ANSI), Internet: <http://www.ansi.org>. Copies of the relevant ISO/IEC Guides are available for inspection in the U.S. Department of Commerce Reading Room, 14th Street and Constitution Avenue, NW, Washington, DC 20230, Room B-399.

§ 280.102 Affirmations.

(a)(1) An accreditation body accrediting third parties who certify manu-

facturing systems as fastener quality assurance systems as described in section 3(7)(B)(iii)(I) of the Act (15 U.S.C. 5402(7)(B)(iii)(I)) shall affirm to the Director, NIST, that it meets the requirements of ISO/IEC Guide 61 (or another document approved by the Director, NIST, under section 10(b) of the Act (15 U.S.C. 5411a(b)) and § 280.101(a) of this part), including revisions from time to time.

(2) An accreditation body accrediting laboratories as described in section 3(1)(B) of the Act (15 U.S.C. 5402(1)(B)) shall affirm to the Director, NIST, that it meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director, NIST, under section 10(d) of the Act (15 U.S.C. 5411a(d)) and § 280.101(d) of this part), including revisions from time to time.

(b) An affirmation required under paragraph (a)(1) or (a)(2) of this section shall take the form of a self-declaration that the accreditation body meets the requirements of the applicable Guide, signed by an authorized representative of the accreditation body. No supporting documentation is required.

(c) Affirmations should be submitted to: FQA Document Certifications, NIST, 100 Bureau Drive, Gaithersburg, MD 20899.

(d) Any affirmation submitted in accordance with this section shall be considered to be a continuous affirmation that the accreditation body meets the requirements of the applicable Guide, unless and until the affirmation is withdrawn by the accreditation body.

§ 280.103 Laboratory accreditation.

A laboratory may be accredited by any laboratory accreditation program that may be established by any entity or entities, which have affirmed to the Director, NIST, under § 280.102 of this subpart, or by the National Voluntary Laboratory Accreditation Program for fasteners, established by the Director, NIST, under part 285 of this chapter.

Subpart C—Enforcement

SOURCE: 61 FR 50558, Sept. 26, 1996, unless otherwise noted. Redesignated at 65 FR 39802, June 28, 2000.

§ 280.200

§ 280.200 Scope.

Section 280.201 of this part specifies that failure to take any action required by or taking any action prohibited by this part constitutes a violation of this part. Section 280.202 describes the penalties that may be imposed for violations of this part. Sections 280.204 through 280.222 establish the procedures for imposing administrative penalties for violations of this part.

[65 FR 39802, June 28, 2000]

§ 280.201 Violations.

(a) *Engaging in prohibited conduct.* No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any action required by the Act, this part, or any order issued thereunder.

(b) *Sale of fasteners.* It shall be unlawful for a manufacturer or distributor, in conjunction with the sale or offer for sale of fasteners from a single lot, to knowingly misrepresent or falsify—

(1) The record of conformance for the lot of fasteners;

(2) The identification, characteristics, properties, mechanical or performance marks, chemistry, or strength of the lot of fasteners; or

(3) The manufacturers' insignia.

(c) *Manufacturers' insignia.* Unless the specifications provide otherwise, fasteners that are required by the applicable consensus standard or standards to bear an insignia identifying their manufacturer shall not be offered for sale or sold in commerce unless

(1) The fasteners bear such insignia; and

(2) The manufacturer has complied with the insignia recordation requirements established under 15 U.S.C. 5407(b).

[61 FR 50558, Sept. 26, 1996, as amended at 63 FR 18275, Apr. 14, 1998; 63 FR 34965, June 26, 1998; 63 FR 51526, Sept. 28, 1998. Redesignated and amended at 65 FR 39802, June 28, 2000]

§ 280.202 Penalties, remedies, and sanctions.

(a) *Civil remedies.* The Attorney General may bring an action in an appropriate United States district court for declaratory and injunctive relief against any person who violates the

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Act or any regulation issued thereunder. Such action may not be brought more than 10 years after the cause of action accrues.

(b) *Civil penalties.* Any person who is determined, after notice and opportunity for a hearing, to have violated the Act or any regulation issued thereunder shall be liable to the United States for a civil penalty of not more than \$25,000 for each violation.

(c) *Criminal penalties.* (1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of the Act or a regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of the Act or a regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned not more than five years or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of the Act or a regulation issued thereunder shall be fined under title 18, United States Code, or imprisoned not more than two years or both.

§ 280.203 Administrative enforcement proceedings.

Sections 280.204 through 280.222 set forth the procedures for imposing administrative penalties for violations of the Act and this part.

[65 FR 39802, June 28, 2000]

§ 280.204 Institution of administrative enforcement proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement (OEE) may begin administrative enforcement proceedings under this part by issuing a charging letter. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of this part has occurred. It will set forth the essential facts about each alleged violation, refer to the specific regulatory or other provisions involved, and give notice of the sanctions available under the Act and this part. The charging letter will inform the respondent that failure to answer the charges as provided in § 280.207 of this part will be treated as a default under

§ 280.208 of this part, that the respondent is entitled to a hearing if a written demand for one is requested with the answer, and that the respondent may be represented by counsel, or by other authorized representative. A copy of the charging letter shall be filed with the administrative law judge, which filing shall toll the running of the applicable statute of limitations. Charging letters may be amended or supplemented at any time before an answer is filed, or, with permission of the administrative law judge, afterwards. The Department may unilaterally withdraw charging letters at any time, by notifying the respondent and the administrative law judge.

(b) *Notice of issuance of charging letter instituting administrative enforcement proceeding.* A respondent shall be notified of the issuance of a charging letter, or any amendment or supplement thereto:

(1) By mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address;

(2) By leaving a copy with the respondent or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process for the respondent; or

(3) By leaving a copy with a person of suitable age and discretion who resides at the respondent's last known dwelling.

(4) Delivery of a copy of the charging letter, if made in the manner described in paragraph (b)(2) or (3) of this section, shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left. The certificate of service shall be filed with the administrative law judge.

(c) *Date.* The date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or service of notice of the issuance of a supplement or amendment to a charging letter, is the date of its delivery, or of its attempted delivery if delivery is refused.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, June 28, 2000]

§ 280.205 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides if not the United States. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the administrative law judge. The Department will be represented by the Office of Chief Counsel for Export Administration, U.S. Department of Commerce.

§ 280.206 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be addressed to "FQA Administrative Enforcement Proceedings," at the address set forth in the charging letter, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, by express or equivalent parcel delivery service, or by hand delivery, is acceptable. Filing by mail from a foreign country shall be by airmail. In addition, the administrative law judge may authorize filing of papers by facsimile or other electronic means, provided that a hard copy of any such paper is subsequently filed. A copy of each paper filed shall be simultaneously served on each party.

(b) *Service.* Service shall be made by personal delivery or by mailing one copy of each paper to each party in the proceeding. Service by delivery service or facsimile, in the manner set forth in paragraph (a) of this section, is acceptable. Service on the Department shall be addressed to the Chief Counsel for Export Administration, Room H-3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Service on a respondent shall be to the address to which the charging letter was sent or to such other address as respondent

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may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the charging letter, filed and served on parties.

(e) *Computing period of time.* In computing any period of time prescribed or allowed by this part or by order of the administrative law judge or the Under Secretary, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is seven days or less.

§ 280.207 Answer and demand for hearing.

(a) *When to answer.* The respondent must answer the charging letter within 30 days after being served with notice of the issuance of a charging letter instituting an administrative enforcement proceeding, or within 30 days of notice of any supplement or amendment to a charging letter, unless time is extended under § 280.217 of this part.

(b) *Contents of answer.* The answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. The answer must admit or deny specifically each separate allegation of the charging letter; if the respondent is without knowledge, the answer must so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission

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of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(c) *Demand for hearing.* If the respondent desires a hearing, a written demand for one must be submitted with the answer. Any demand by the Department for a hearing must be filed with the administrative law judge within 30 days after service of the answer. Failure to make a timely written demand for a hearing shall be deemed a waiver of the party's right to a hearing, except for good cause shown. If no party demands a hearing, the matter will go forward in accordance with the procedures set forth in § 280.216 of this part.

(d) *English language required.* The answer, all other papers, and all documentary evidence must be submitted in English, or translations into English must be filed and served at the same time.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, June 28, 2000]

§ 280.208 Default.

(a) *General.* Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on the Department's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial decision containing findings of fact and appropriate conclusions of law and issue an initial decision and order imposing appropriate sanctions. The decision and order may be appealed to the Under Secretary in accordance with the applicable procedures set forth in § 280.222 of this part.

(b) *Petition to set aside default—(1) Procedure.* Upon petition filed by a respondent against whom a default order has been issued, which petition is accompanied by an answer meeting the requirements of 280.207(b) of this part, the Under Secretary may, after giving all parties an opportunity to comment,

and for good cause shown, set aside the default and vacate the order entered thereon and remand the matter to the administrative law judge for further proceedings.

(2) *Time limits.* A petition under this section must be made within one year of the date of entry of the order which the petition seeks to have vacated.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, 39803, June 28, 2000]

§ 280.209 Summary decision.

At any time after a proceeding has been initiated, a party may move for a summary decision disposing of some or all of the issues. The administrative law judge may render an initial decision and issue an order if the entire record shows, as to the issue(s) under consideration:

(a) That there is no genuine issue as to any material fact; and

(b) That the moving party is entitled to a summary decision as a matter of law.

§ 280.210 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the administrative law judge or by waiver or agreement of the parties. The administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the administrative law judge for such enforcement or protective order as that party deems warranted with respect to such dis-

covery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties, and a copy of the certificate of service shall be filed with the administrative law judge. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by a district court of the United States

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may be sought under 15 U.S.C. 5408(b)(6).

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, June 28, 2000]

§ 280.211 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the administrative law judge may issue subpoenas requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as contempt thereof.

(b) *Service.* Subpoenas issued by the administrative law judge may be served in any of the methods set forth in § 280.206(b) of this part.

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the administrative law judge determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, June 28, 2000]

§ 280.212 Matter protected against disclosure.

(a) *Protective measures.* The administrative law judge may limit discovery or introduction of evidence or issue

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such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information. Where the administrative law judge determines that documents containing the classified or sensitive matter need to be made available to a party to avoid prejudice, the ALJ may direct that an unclassified and/or non-sensitive summary or extract of the documents be prepared. The administrative law judge may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the administrative law judge determines that this procedure is unsatisfactory and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the administrative law judge may provide the parties an opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 280.213 Prehearing conference.

(a) The administrative law judge, on his or her own motion or on request of a party, may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

- (1) Simplification of issues;
 - (2) The necessity or desirability of amendments to pleadings;
 - (3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or
 - (4) Such other matters as may expedite the disposition of the proceedings.
- (b) The administrative law judge may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the administrative law judge may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The administrative law judge will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 280.214 Hearings.

(a) *Scheduling.* The administrative law judge, by agreement with the parties or upon notice to all parties of not less than 30 days, will schedule a hearing. All hearings will be held in Washington, DC., unless the administrative law judge determines, for good cause shown, that another location would better serve the interests of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof to the parties, their representatives and witnesses if the administrative law judge deems this necessary or advisable in order to protect sensitive matter (see § 280.212 of this part) from improper disclosure. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the administrative law judge to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(c) *Testimony and record.* Witnesses will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, transcribed and filed with the administrative law judge. A respondent may examine the transcript and may obtain a copy by paying any applicable costs. Upon such terms as the administrative law judge deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that

the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed, and that party's failure to appear will not affect the validity of the hearing or any proceedings or action taken thereafter.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, June 28, 2000]

§ 280.215 Interlocutory review of rulings.

(a) At the request of a party, or on the administrative law judge's own initiative, the administrative law judge may certify to the Under Secretary for review a ruling that does not finally dispose of a proceeding, if the administrative law judge determines that immediate review may hasten or facilitate the final disposition of the matter.

(b) Upon certification to the Under Secretary of the interlocutory ruling for review, the parties will have 10 days to file and serve briefs stating their positions, and five days to file and serve replies, following which the Under Secretary will decide the matter promptly.

§ 280.216 Proceeding without a hearing.

If the parties have waived a hearing, the case will be decided on the record by the administrative law judge. Proceeding without a hearing does not relieve the parties from the necessity of proving the facts supporting their charges or defenses. Affidavits or declarations, depositions, admissions, answers to interrogatories and stipulations may supplement other documentary evidence in the record. The administrative law judge will give each party reasonable opportunity to file rebuttal evidence.

§ 280.217 Procedural stipulations; extension of time.

(a) *Procedural stipulations.* Unless otherwise ordered, a written stipulation agreed to by all parties and filed with the administrative law judge will modify any procedures established by this part.

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(b) *Extension of time.* (1) The parties may extend any applicable time limitation, by stipulation filed with the administrative law judge before the time limitation expires.

(2) The administrative law judge may, on the judge's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time within which to file and serve an answer to a charging letter or do any other act required by this part.

§ 280.218 Decision of the administrative law judge.

(a) *Predecisional matters.* Except for default proceedings under § 280.208 of this part, the administrative law judge will give the parties reasonable opportunity to submit the following, which will be made a part of the record:

(1) Exceptions to any ruling by the judge or to the admissibility of evidence proffered at the hearing;

(2) Proposed findings of fact and conclusions of law;

(3) Supporting legal arguments for the exceptions and proposed findings and conclusions submitted; and

(4) A proposed order.

(b) *Decision and order.* After considering the entire record in the proceeding, the administrative law judge will issue a written initial decision. The decision will include findings of fact, conclusions of law, and findings as to whether there has been a violation of the Act, this part, or any order issued thereunder. If the administrative law judge finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more charges, the ALJ shall order dismissal of the charges in whole or in part, as appropriate. If the administrative law judge finds that one or more violations have been committed, the ALJ may issue an order imposing administrative sanctions, as provided in this part. The decision and order shall be served on each party, and shall become effective as the final decision of the Department 30 days after service, unless an appeal is filed in accordance with § 280.222 of this part. In determining the amount of any civil penalty the ALJ shall consider the nature, circumstances and gravity

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of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(c) *Suspension of sanctions.* Any order imposing administrative sanctions may provide for the suspension of the sanction imposed, in whole or in part and on such terms of probation or other conditions as the administrative law judge or the Under Secretary may specify. Any suspension order may be modified or revoked by the signing official upon application by the Department showing a violation of the probationary terms or other conditions, after service on the respondent of notice of the application in accordance with the service provisions of § 280.206 of this part, and with such opportunity for response as the responsible signing official in his/her discretion may allow. A copy of any order modifying or revoking the suspension shall also be served on the respondent in accordance with the provisions of § 280.607 of this part.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, 39803, June 28, 2000]

§ 280.219 Settlement.

(a) *Cases may be settled before service of a charging letter.* In cases in which settlement is reached before service of a charging letter, a proposed charging letter will be prepared, and a settlement proposal consisting of a settlement agreement and order will be submitted to the Assistant Secretary for approval and signature. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed as though no settlement proposal had been made. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and no action will be required by the administrative law judge.

(b) *Cases may also be settled after service of a charging letter.* (1) If the case is pending before the administrative law judge, the ALJ shall stay the proceedings for a reasonable period of time, usually not to exceed 30 days,

upon notification by the parties that they have entered into good faith settlement negotiations. The administrative law judge may, in his/her discretion, grant additional stays. If settlement is reached, a proposal will be submitted to the Assistant Secretary for approval and signature. If the Assistant Secretary approves the proposal, he/she will issue an appropriate order, and notify the administrative law judge that the case is withdrawn from adjudication. If the Assistant Secretary does not approve the proposal, he/she will notify the parties and the case will proceed to adjudication by the administrative law judge as though no settlement proposal had been made.

(2) If the case is pending before the Under Secretary under §280.222 of this part, the parties may submit a settlement proposal to the Under Secretary for approval and signature. If the Under Secretary approves the proposal, he/she will issue an appropriate order. If the Under Secretary does not approve the proposal, the case will proceed to final decision in accordance with Section 280.623 of this part, as appropriate.

(c) Any order disposing of a case by settlement may suspend the administrative sanction imposed, in whole or in part, on such terms of probation or other conditions as the signing official may specify. Any such suspension may be modified or revoked by the signing official, in accordance with the procedures set forth in §280.218(c) of this part.

(d) Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the Department has neither the authority nor the responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility is vested in the Attorney General and the Department of Justice.

(e) Cases that are settled may not be reopened or appealed.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, 39803, June 28, 2000]

§ 280.220 Reopening.

The respondent may petition the administrative law judge within one year of the date of the final decision, except where the decision arises from a default judgment or from a settlement, to reopen an administrative enforcement proceeding to receive any relevant and material evidence which was unknown or unobtainable at the time the proceeding was held. The petition must include a summary of such evidence, the reasons why it is deemed relevant and material, and the reasons why it could not have been presented at the time the proceedings were held. The administrative law judge will grant or deny the petition after providing other parties reasonable opportunity to comment. If the proceeding is reopened, the administrative law judge may make such arrangements as the ALJ deems appropriate for receiving the new evidence and completing the record. The administrative law judge will then issue a new initial decision and order, and the case will proceed to final decision and order in accordance with § 280.222 of this part.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, 39803, June 28, 2000]

§ 280.221 Record for decision and availability of documents.

(a) *General.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings and, for purposes of any appeal under §280.222 of this part, the decision of the administrative law judge and such submissions as are provided for by §280.623 of this part, will constitute the record and the exclusive basis for decision. When a case is settled after the service of a charging letter, the record will consist of any and all of the foregoing, as well as the settlement agreement and the order. When a case is settled before service of a charging letter, the record will consist of the proposed charging letter, the settlement agreement and the order.

(b) *Restricted access.* On the administrative law judge's own motion, or on the motion of any party, the administrative law judge may direct that there be a restricted access portion of the record for any material in the record to

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which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible for submitting, at the time specified in paragraph (c)(2) of this section, a version of the document proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The administrative law judge may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents*—(1) *Scope.* All charging letters, answers, initial decisions, and orders disposing of a case will be made available for public inspection in the BXA Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H-6624, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* Documents are available immediately upon filing, except for any portion of the record for which a request for segregation is made. Parties that seek to restrict access to any portion of the record under paragraph (b) of this section must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, 39803, June 28, 2000]

§ 280.222 Appeals.

(a) *Grounds.* A party may appeal to the Under Secretary from an order disposing of a proceeding or an order denying a petition to set aside a default or a petition for reopening, on the grounds:

(1) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

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(2) That a necessary legal conclusion or finding is contrary to law;

(3) That prejudicial procedural error occurred; or

(4) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion. The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal is taken.

(b) *Filing of appeal.* An appeal from an order must be filed with the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H-3898, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 30 days after service of the order appealed from. If the Under Secretary cannot act on an appeal for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the appeal.

(c) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Under Secretary, upon application by a party and with opportunity for response, grants a stay.

(d) *Appeal procedure.* The Under Secretary normally will not hold hearings or entertain oral argument on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The decision will be in writing and will be accompanied by an order signed by the Under Secretary giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the administrative law judge or may refer the case back to the administrative law judge for further proceedings.

(f) *Delivery.* The final decision and implementing order shall be served on

the parties and will be publicly available in accordance with § 280.221 of this part.

(g) *Judicial review.* The charged party may appeal the Under Secretary's written order within 30 days to the appropriate United States District Court pursuant to section 9(b)(3) of the Act (15 U.S.C. 5408(b)(3)) by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Chief Counsel for Export Administration, Room H-3839, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The findings and order of the Under Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5 United States Code.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39802, June 28, 2000]

Subpart D—Recordal of Insignia

§ 280.300 Recorded insignia required prior to offer for sale.

Unless the specifications provide otherwise, if a fastener is required by the applicable consensus standard(s) to bear an insignia identifying its manufacturer, the manufacturer must:

(a) Record the insignia with the U.S. Patent and Trademark Office prior to any sale or offer for sale of the fastener; and

(b) Apply the insignia to any fastener that is sold or offered for sale. The insignia must be readable, and must be applied using the method for applying a permanent insignia that is provided for in the applicable consensus standard(s), or, if the applicable consensus standard(s) do(es) not specify a method for applying a permanent insignia, through any means of imprinting a permanent impression.

[65 FR 39803, June 28, 2000]

THE WRITTEN APPLICATION

§ 280.310 Application for insignia.

(a) Each manufacturer must submit a written application for recordal of an insignia on the Fastener Insignia Reg-

ister along with the prescribed fee. The application must be in a form prescribed by the Director, USPTO.

(b) The written application must be in the English language and must include the following:

(1) The name of the manufacturer;

(2) The address of the manufacturer;

(3) The entity, domicile, and state of incorporation, if applicable, of the manufacturer;

(4) Either:

(i) A request for recordal and issuance of a unique alphanumeric designation by the Director, USPTO, or

(ii) A request for recordal of a trademark, which is the subject of either a duly filed application or a registration for fasteners in the name of the manufacturer in the U.S. Patent and Trademark Office on the Principal Register, indicating the application serial number or registration number and accompanied by a copy of the drawing that was included with the application for trademark registration, or a copy of the registration;

(5) A statement that the manufacturer will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the applicant for recordal is a "manufacturer" as that term is defined in 15 U.S.C. 5402;

(7) A statement that the person signing the application on behalf of the manufacturer has personal knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the manufacturer;

(8) A verification stating that the person signing declares under penalty of perjury under the laws of the United States of America that the information and statements included in the application are true and correct; and

(9) The application fee.

(c) A manufacturer may designate only one trademark for recordal on the Fastener Insignia Register in a single application. The trademark application or registration that forms the basis for the fastener recordal must be in active status, that is, a pending application or a registration which is not expired, or canceled, at the time of the application for recordal.

(d) Applications and other documents should be addressed to: Director,

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United States Patent and Trademark Office, P.O. Box 16471, Arlington, VA 22215-1471 Attn: FQA

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39803, June 28, 2000; 70 FR 50181, Aug. 26, 2005]

§ 280.311 Review of the application.

The Director, USPTO, will review the application for compliance with § 280.310. If the application does not contain one or more of the elements required by § 280.310, the Director, USPTO, will not issue a certificate of recordal, and will return the papers and fees. The Director, USPTO, will notify the applicant for recordal of any defect in the application. Applications for recordal of an insignia may be re-submitted to the Director, USPTO, at any time.

[65 FR 39803, June 28, 2000]

§ 280.312 Certificate of recordal.

(a) If the application complies with the requirements of § 280.310, the Director, USPTO, shall accept the application and issue a certificate of recordal. Such certificate shall be issued in the name of the United States of America, under the seal of the United States Patent and Trademark Office, and a record shall be kept in the United States Patent and Trademark Office. The certificate of recordal shall display the recorded insignia of the manufacturer, and state the name, address, legal entity and domicile of the manufacturer, as well as the date of issuance of such certificate.

(b) Certificates that were issued prior to June 8, 1999, shall remain in active status and may be maintained in accordance with the provisions of § 280.320 of this subpart, but only if:

(1) The certificate is held by a manufacturer, and

(2) The fasteners associated with the certificate are fasteners that must bear an insignia pursuant to 15 U.S.C. 5407.

[65 FR 39803, June 28, 2000]

§ 280.313 Recordal of additional insignia.

(a) A manufacturer to whom the Director, USPTO, has issued an alphanumeric designation may apply for recordal of its trademark for fasteners

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if the trademark is the subject of a duly filed application or is registered in the United States Patent and Trademark Office on the Principal Register. Upon recordal, either the alphanumeric designation or the trademark, or both, may be used as recorded insignias.

(b) A manufacturer for whom the Director, USPTO, has recorded a trademark as its fastener insignia may apply for issuance and recordal of an alphanumeric designation as a fastener insignia. Upon recordal, either the alphanumeric designation or the trademark, or both, may be used as recorded insignias.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39803, June 28, 2000]

POST-RECORDAL MAINTENANCE

§ 280.320 Maintenance of the certificate of recordal.

(a) Certificates of recordal remain in an active status for five years and may be maintained in an active status for subsequent five-year periods running consecutively from the date of issuance of the certificate of recordal upon compliance with the requirements of paragraph (c) of this section.

(b) Maintenance applications shall be required only if the holder of the certificate of recordal is a manufacturer at the time the maintenance application is required.

(c) Certificates of recordal will be designated as inactive unless, within six months prior to the expiration of each five-year period running consecutively from the date of issuance, the certificate holder files the prescribed maintenance fee and the maintenance application. The maintenance application must be in the English language and must include the following:

(1) The name of the manufacturer;

(2) The address of the manufacturer;

(3) The entity, domicile, and state of incorporation, if applicable, of the manufacturer;

(4) A copy of manufacturer's certificate of recordal;

(5) A statement that the manufacturer will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the applicant for recordal is a "manufacturer" as that term is defined in 15 U.S.C. 5402;

(7) A statement that the person signing the application on behalf of the manufacturer has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the manufacturer;

(8) A verification stating that the person signing declares under penalty of perjury under the laws of the United States of America that the information and statements included in the application are true and correct; and

(9) The maintenance application fee.

(d) Where no maintenance application is timely filed, a certificate of recordal will be designated inactive. However, such certificate may be designated active if the certificate holder files the prescribed maintenance fee and application and the additional surcharge within six months following the expiration of the certificate of recordal.

(e) After the six-month period following the expiration of the certificate of recordal, the certificate of recordal shall be deemed active only if the certificate holder files a new application for recordal with the prescribed fee for obtaining a fastener insignia and attaches a copy of the expired certificate of recordal.

(f) A separate maintenance application and fee must be filed and paid for each recorded insignia.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39803, 39804, June 28, 2000]

§ 280.321 Notification of changes of address.

The applicant for recordal or the holder of a certificate of recordal shall notify the Director, USPTO, of any change of address or change of name no later than six months after the change. The holder must do so whether the certificate of recordal is in an active or inactive status.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39803, 39804, June 28, 2000]

§ 280.322 Transfer or amendment of the certificate of recordal.

(a) The certificate of recordal cannot be transferred or assigned.

(b) The certificate of recordal may be amended only to show a change of name or change of address.

[61 FR 50558, Sept. 26, 1996. Redesignated at 65 FR 39803, June 28, 2000]

§ 280.323 Transfer or assignment of the trademark registration or recorded insignia.

(a) A trademark application or registration which forms the basis of a fastener recordal may be transferred or assigned. Any transfer or assignment of such an application or registration must be recorded in the United States Patent and Trademark Office within three months of the transfer or assignment. A copy of such transfer or assignment must also be sent to: Box Fastener, Director, United States Patent and Trademark Office, Washington, DC 20231.

(b) Upon transfer or assignment of a trademark application or registration which forms the basis of a certificate of recordal, the Director, USPTO, shall designate the certificate of recordal as inactive. The certificate of recordal shall be deemed inactive as of the effective date of the transfer or assignment. Certificates of recordal designated inactive due to transfer or assignment of a trademark application or registration cannot be reactivated.

(c) An assigned trademark application or registration may form the basis for a new application for recordal of a fastener insignia.

(d) A fastener insignia consisting of an alphanumeric designation issued by the Director, USPTO, can be transferred or assigned.

(e) Upon transfer or assignment of an alphanumeric designation, the Director, USPTO, shall designate such alphanumeric designation as inactive. The alphanumeric designation shall be deemed inactive as of the effective date of the transfer or assignment. Alphanumeric designations which are designated inactive due to transfer or assignment may be reactivated upon application by the assignee of such alphanumeric designation. Such application must meet all the requirements of § 280.310 and must include a copy of the pertinent portions of the document assigning rights in the alphanumeric designation. Such application must be

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filed within six months of the date of assignment.

(f) An alphanumeric designation that is reactivated after it has been transferred or assigned shall remain in active status until the expiration of the five year period that began upon the issuance of the alphanumeric designation to its original owner.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39803, 39804, June 28, 2000]

§ 280.324 Change in status of trademark registration or amendment of the trademark.

(a) The Director, USPTO, shall designate the certificate of recordal as inactive, upon:

(1) Issuance of a final decision on appeal which refuses registration of the application which formed the basis for the certificate of recordal;

(2) Abandonment of the application which formed the basis for the certificate of recordal;

(3) Cancellation or expiration of the trademark registration which formed the basis of the certificate of recordal; or

(4) An amendment of the mark in a trademark application or registration that forms the basis for a certificate of recordal. The certificate of recordal shall become inactive as of the date the amendment is filed. A new application for recordal of the amended trademark application or registration may be submitted to the Commissioner at any time.

(b) Certificates of recordal designated inactive due to cancellation, expiration, or amendment of the trademark registration, or abandonment or amendment of the trademark application, cannot be reactivated.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39803, 39804, June 28, 2000]

§ 280.325 Cumulative listing of recordal information.

The Director, USPTO, shall maintain a record of the names, current addresses, and legal entities of all recorded manufacturers and their recorded insignia.

[65 FR 39804, June 28, 2000]

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§ 280.326 Records and files of the United States Patent and Trademark Office.

The records relating to fastener insignia shall be open to public inspection. Copies of any such records may be obtained upon request and payment of the fee set by the Director, USPTO.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39803, 39804, June 28, 2000]

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

Sec.

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AUTHORITY: 15 U.S.C. 272 *et seq.*

SOURCE: 66 FR 29221, May 30, 2001, unless otherwise noted.

§ 285.1 Purpose.

The purpose of part 285 is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories. Supplementary technical and administrative requirements are provided in supporting handbooks and documents as needed, depending on the criteria established for specific Laboratory Accreditation Programs (LAPs)

§ 285.2 Confidentiality.

To the extent permitted by applicable laws, NVLAP will protect the confidentiality of all information obtained relating to the application, on-site assessment, proficiency testing, evaluation, and accreditation of laboratories.

§ 285.3 Referencing NVLAP accreditation.

The term *NVLAP* (represented by the NVLAP logo) is a federally registered certification mark of the National Institute of Standards and Technology and the federal government, who retain exclusive rights to control the use thereof. Permission to use the term and/or logo is granted to NVLAP-accredited laboratories for the limited purposes of announcing their accredited status, and for use on reports that describe only testing and calibration within the scope of accreditation. NIST reserves the right to control the quality of the use of the term *NVLAP* and of the logo itself.

§ 285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.

NVLAP establishes LAPs in response to legislative actions or to requests from private sector entities and government agencies. For legislatively mandated LAPs, NVLAP shall establish the LAP. For requests from private sector entities and government agencies, the Chief of NVLAP shall analyze each request, and after consultation with interested parties through public workshops and other means shall establish the requested LAP if the Chief of NVLAP determines there is need for the requested LAP.

§ 285.5 Termination of a LAP.

(a) The Chief of NVLAP may terminate a LAP when he/she determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. In the event that the Chief of NVLAP proposes to terminate a LAP, a notice will be published in the FEDERAL REGISTER setting forth the basis for that determination.

(b) When a LAP is terminated, NVLAP will no longer grant or renew accreditations following the effective date of termination. Accreditations previously granted shall remain effective until their expiration date unless terminated voluntarily by the laboratory or revoked by NVLAP. Technical expertise will be maintained by NVLAP while any accreditation remains effective.

§ 285.6 Application for accreditation.

A laboratory may apply for accreditation in any of the established LAPs. The applicant laboratory shall provide a completed application to NVLAP, pay all required fees and agree to certain conditions as set forth in the NVLAP Application for Accreditation, and provide a quality manual to NVLAP (or a designated NVLAP assessor) prior to the assessment process.

§ 285.7 Assessment.

(a) *Frequency and scheduling.* Before initial accreditation, during the first renewal year, and every two years thereafter, an on-site assessment of each laboratory is conducted to determine compliance with the NVLAP criteria.

(b) *Assessors.* NVLAP shall select qualified assessors to evaluate all information collected from an applicant laboratory pursuant to § 285.6 of this part and to conduct the assessment on its behalf at the laboratory and any other sites where activities to be covered by the accreditation are performed.

(c) *Conduct of assessment.* (1) Assessors use checklists provided by NVLAP so that each laboratory receives an assessment comparable to that received by others.

(2) During the assessment, the assessor meets with management and laboratory personnel, examines the quality system, reviews staff information, examines equipment and facilities, observes demonstrations of testing or calibrations, and examines tests or calibration reports.

(3) The assessor reviews laboratory records including resumes, job descriptions of key personnel, training, and competency evaluations for all staff members who routinely perform, or affect the quality of the testing or calibration for which accreditation is sought. The assessor need not be given information which violates individual privacy, such as salary, medical information, or performance reviews outside the scope of the accreditation program. The staff information may be kept in the laboratory's official personnel folders or separate folders that contain only the information that the NVLAP assessor needs to review.

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(4) At the conclusion of the assessment, the assessor conducts an exit briefing to discuss observations and any deficiencies with the authorized representative who signed the NVLAP application and other responsible laboratory staff.

(d) *Assessment report.* At the exit briefing, the assessor submits a written report on the compliance of the laboratory with the accreditation requirements, together with the completed checklists, where appropriate.

(e) *Deficiency notification and resolution.* (1) Laboratories are informed of deficiencies during the on-site assessment, and deficiencies are documented in the assessment report (see paragraph (d) of this section).

(2) A laboratory shall, within thirty days of the date of the assessment report, provide documentation that the specified deficiencies have either been corrected and/or a plan of corrective actions as described in the NVLAP handbooks.

(3) If substantial deficiencies have been cited, NVLAP may require an additional on-site assessment, at additional cost to the laboratory, prior to granting accreditation. All deficiencies and resolutions will be subject to thorough review and evaluation prior to an accreditation decision.

(4) After the assessor submits their final report, NVLAP reviews the report and the laboratory's response to determine if the laboratory has met all of the on-site assessment requirements.

§ 285.8 Proficiency testing.

(a) NVLAP proficiency testing is consistent with the provisions contained in ISO/IEC Guide 43 (Parts 1 and 2), Proficiency testing by interlaboratory comparisons, where applicable, including revisions from time to time. Proficiency testing may be organized by NVLAP itself or a NVLAP-approved provider of services. Laboratories must participate in proficiency testing as specified for each LAP in the NVLAP program handbooks.

(b) *Analysis and reporting.* Proficiency testing data are analyzed by NVLAP and reports of the results are made known to the participants. Summary results are available upon request to other interested parties; e.g., profes-

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sional societies and standards writing bodies. The identity and performance of individual laboratories are kept confidential.

(c) *Proficiency testing deficiencies.* (1) Unsatisfactory participation in any NVLAP proficiency testing program is a technical deficiency which must be resolved in order to obtain initial accreditation or maintain accreditation.

(2) Proficiency testing deficiencies are defined as, but not limited to, one or more of the following:

(i) Failure to meet specified proficiency testing performance requirements prescribed by NVLAP;

(ii) Failure to participate in a regularly scheduled "round" of proficiency testing for which the laboratory has received instructions and/or materials;

(iii) Failure to submit laboratory control data as required; and

(iv) Failure to produce acceptable test or calibration results when using NIST Standard Reference Materials or special artifacts whose properties are well-characterized and known to NIST/NVLAP.

(3) NVLAP will notify the laboratory of proficiency testing deficiencies and actions to be taken to resolve the deficiencies. Denial or suspension of accreditation will result from failure to resolve deficiencies.

§ 285.9 Granting accreditation.

(a) The Chief of NVLAP is responsible for all NVLAP accreditation actions, including granting, denying, renewing, suspending, and revoking any NVLAP accreditation.

(b) Initial accreditation is granted when a laboratory has met all NVLAP requirements. One of four accreditation renewal dates (January 1, April 1, July 1, or October 1) is assigned to the laboratory and is usually retained as long as the laboratory remains in the program. Initial accreditation is granted for a period of one year; accreditation expires and is renewable on the assigned date.

(c) Renewal dates may be reassigned to provide benefits to the laboratory and/or NVLAP. If a renewal date is changed, the laboratory will be notified in writing of the change and any related adjustment in fees.

(d) When accreditation is granted, NVLAP shall provide to the laboratory a Certificate of Accreditation and a Scope of Accreditation,

§ 285.10 Renewal of accreditation.

(a) An accredited laboratory must submit both its application for renewal and fees to NVLAP prior to expiration of the laboratory's current accreditation to avoid a lapse in accreditation.

(b) On-site assessments of currently accredited laboratories are performed in accordance with the procedures in § 285.7. If deficiencies are found during the assessment of an accredited laboratory, the laboratory must follow the procedures set forth in § 285.7(e)(2) or face possible suspension or revocation of accreditation.

§ 285.11 Changes to scope of accreditation.

A laboratory may request in writing changes to its Scope of Accreditation. If the laboratory requests additions to its Scope, it must meet all NVLAP criteria for the additional tests or calibrations, types of tests or calibrations, or standards. The need for an additional on-site assessment and/or proficiency testing will be determined on a case-by-case basis.

§ 285.12 Monitoring visits.

(a) In addition to regularly scheduled assessments, monitoring visits may be conducted by NVLAP at any time during the accreditation period. They may occur for cause or on a random selection basis. While most monitoring visits will be scheduled in advance with the laboratory, NVLAP may conduct unannounced monitoring visits.

(b) The scope of a monitoring visit may range from checking a few designated items to a complete review. The assessors may review deficiency resolutions, verify reported changes in the laboratory's personnel, facilities, or operations, or administer proficiency testing, when appropriate.

§ 285.13 Denial, suspension, revocation, or termination of accreditation.

(a) A laboratory may at any time voluntarily terminate its participation and responsibilities as an accredited

laboratory by advising NVLAP in writing of its desire to do so.

(b) If NVLAP finds that an accredited laboratory does not meet all NVLAP requirements, has violated the terms of its accreditation, or does not continue to comply with the provisions of these procedures, NVLAP may suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation.

(1) If a laboratory's accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated. Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test or calibration reports, correspondence, or advertising during the suspension period in the area(s) affected by the suspension.

(2) NVLAP will not require a suspended laboratory to return its Certificate and Scope of Accreditation, but the laboratory must refrain from using the NVLAP logo in the area(s) affected until such time as the problem(s) leading to the suspension has been resolved. When accreditation is reinstated, NVLAP will authorize the laboratory to resume testing or calibration activities in the previously suspended area(s) as an accredited laboratory.

(c) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(1) The laboratory will have thirty days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within the thirty-day period.

(2) If accreditation is revoked, the laboratory may be given the option of

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voluntarily terminating the accreditation.

(3) A laboratory whose accreditation has been revoked must cease use of the NVLAP logo on any of its reports, correspondence, or advertising related to the area(s) affected by the revocation. If the revocation is total, NVLAP will instruct the laboratory to return its Certificate and Scope of Accreditation and to remove the NVLAP logo from all test or calibration reports, correspondence, or advertising. If the revocation affects only some, but not all of the items listed on a laboratory's Scope of Accreditation, NVLAP will issue a revised Scope that excludes the revoked area(s) in order that the laboratory might continue operations in accredited areas.

(d) A laboratory whose accreditation has been voluntarily terminated, denied or revoked, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the NVLAP conditions and criteria for accreditation.

§ 285.14 Criteria for accreditation.

The requirements for laboratories to be recognized by the National Voluntary Laboratory Accreditation Program as competent to carry out tests and/or calibrations are contained in clauses 4 and 5 of ISO/IEC 17025, *General requirements for the competence of testing and calibration laboratories*, including revisions from time to time.

§ 285.15 Obtaining documents.

(a) Application forms, NVLAP handbooks, and other NVLAP documents and information may be obtained by contacting the NVLAP, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, Maryland 20899-2140; phone: 301-975-4016; fax: 301-926-2884; e-mail: nvlap@nist.gov.

(b) Copies of all ISO/IEC documents are available from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, New York 10036; phone: 212-642-4900; fax: 212-398-0023; web site: www.ansi.org. You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation

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Program, National Institute of Standards and Technology, 820 West Diamond Avenue, Room 297, Gaithersburg, MD.

PART 286—NATIONAL VOLUNTARY CONFORMITY ASSESSMENT SYSTEM EVALUATION (NVCASE) PROGRAM

Sec.

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AUTHORITY: 15 U.S.C. 272 *et seq.*

SOURCE: 59 FR 19131, Apr. 22, 1994, unless otherwise noted.

§ 286.1 Purpose.

The purpose of this program is to enable U.S. industry to satisfy mandated foreign technical requirements using the results of U.S.-based conformity assessment programs that perform technical evaluations comparable in their rigor to practices in the receiving country. Under this program, the Department of Commerce, acting through the National Institute of Standards and Technology, evaluates U.S.-based conformity assessment bodies in order to be able to give assurances to a foreign government that qualifying bodies meet that government's requirements and can provide results that are acceptable to that government. The program is intended to provide a technically-based U.S. approval process for U.S. industry to gain foreign market access; the acceptability of conformity assessment results to the relevant foreign government will be a matter for agreement between the two governments.

§ 286.2 Scope.

(a) For purposes of this program, conformity assessment consists of product sample testing, product certification,

and quality system registration. Associated activities can be classified by level:

(1) *Conformity level*: This level encompasses comparing a product, process, service, or system with a standard or specification. As appropriate, the evaluating body can be a testing laboratory, product certifier or certification body, or quality system registrar.

(2) *Accreditation level*: This level encompasses the evaluation of a testing laboratory, a certification body, or a quality system registrar by an independent body—an accreditation body—based on requirements for the acceptance of these bodies, and the granting of accreditation to those which meet the established requirements.

(3) *Recognition level*: This level encompasses the evaluation of an accreditation body based on requirements for its acceptance, and the recognition by the evaluating body of the accreditation body which satisfies the established requirements.

(b) NIST operates the NVCASE program as follows:

(1) *Conformity level*: Under this program NIST accepts requests for evaluations of U.S. bodies involved in activities related to conformity assessment. NIST does not perform conformity assessments as part of the program and therefore does not accept requests for such evaluations.

(2) *Accreditation level*: NIST accepts requests for accreditation of conformity assessment bodies only when (i) directed by U.S. law; (ii) requested by another U.S. government agency; or (iii) requested to respond to a specific U.S. industrial or technical need, relative to a mandatory foreign technical requirement, if it has been determined after public consultation that (A) there is no satisfactory accreditation alternative available and the private sector has declined to make acceptable accreditation available, and (B) there is evidence that significant public disadvantage would result from the absence of any alternative.

(3) *Recognition level*: NIST accepts requests for recognition of bodies that accredit testing laboratories, certification bodies, and quality system registrars when (i) directed by U.S. law; (ii) requested by another U.S. govern-

ment agency; or (iii) requested to respond to a specific U.S. industrial or technical need relative to a mandatory foreign technical requirement if it has been determined after public consultation that (A) there is no suitable alternative available and (B) there is evidence that significant public disadvantage would result from the absence of any alternative.

§ 286.3 Objective.

The objective of the program is to identify the activities of requesting U.S.-based conformity assessment bodies that have been evaluated as meeting requirements established for their acceptance by foreign governments. The evaluations may be provided by NIST or by bodies recognized by NIST for this purpose under the scope of this program.

§ 286.4 Implementation.

The program is operated on a cost reimbursable basis. It is open for voluntary participation by any U.S.-based body that conducts activities related to conformity assessment falling within the program's scope. A common procedural approach is followed in responding to a request to participate. (See § 286.7 Evaluation process.) All evaluation activities rely on the use of generic program requirements based on standards and guides for the operation and acceptance of activities related to conformity assessment. Specific criteria for use in each evaluation are derived from the program requirements, as appropriate, for the mandated foreign technical requirements specified in the request to participate. A request involving a foreign technical requirement not previously addressed by NVCASE will result in an announcement of NIST's intent to develop evaluation criteria specific to the relevant requirements. NIST will contact all cognizant and interested federal agencies to coordinate appropriate actions and procedures.

§ 286.5 Program requirements.

NIST provides and maintains documented generic requirements to be applied in evaluations related to accreditation and recognition within the scope

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of the program. Available documentation is provided on request to prospective program participants and other interested parties. Generic requirements are developed with public input and are based on guides for the acceptance of conformity assessment activities issued by such international organizations as the International Organization for Standardization and the International Electrotechnical Commission. NIST also provides and maintains documented criteria provided in response to requests for evaluations specific to mandated foreign technical requirements. Criteria are developed with public input derived from the application and interpretation of generic program requirements in relation to specified mandated requirements. Both documented generic requirements and specific criteria are developed and maintained with input from the public.

§ 286.6 Public consultation.

NIST relies on substantial advice and technical assistance from all parties interested in program requirements and related specific criteria. Interested U.S. government agencies are routinely to be informed of prospective NVCASE actions, and advice is sought from those agencies on any actions of mutual interest. In preparing program documentation, input is also sought from workshops announced in the FEDERAL REGISTER and open to the general public and other public means to identify appropriate standards and guides and to develop and maintain generic requirements, based on the identified standards and guides. Where relevant Federal advisory committees are available, their advice may also be sought. Similar procedures will be followed with respect to each request for evaluation which necessitates the development of criteria, derived from the generic requirements, specific to mandated foreign technical requirements.

§ 286.7 Evaluation process.

(a) Each applicant requesting to be evaluated under NVCASE is expected to initiate the process and assume designated responsibilities as NIST proceeds with its evaluation:

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(1) *Application.* The applicant completes and submit a request to be evaluated.

(2) *Fee.* The applicant submits a partial payment with the application and agrees to submit the remaining balance based on evaluation costs as a condition for satisfactory completion of the process.

(3) *Documentation.* The applicant operates a system and procedures that meet the applicable generic requirements and specific criteria. Relevant documentation submitted with the application is reviewed by NIST.

(4) *On-site assessment.* The applicant and NIST cooperate in the scheduling and conduct of all necessary on-site evaluations, including the resolution of any deficiencies cited.

(5) *Final review.* The applicant provides any supplementary materials requested by NIST, then NIST completes the review and decides on appropriate action.

(b) NIST may take one of the following actions with regard to an applicant:

(1) *Certificate.* If an applicant fully demonstrates conformity with all program requirements and specific criteria, NIST issues a certificate documenting this finding. Each certificate is accompanied by a document describing the specific scope of the accreditation or recognition.

(2) *Denial.* If an applicant cannot demonstrate conformity with all program requirements and specific criteria, NIST may deny award of the certificate. An applicant who has failed to complete the evaluation satisfactorily may reapply when prepared to demonstrate full conformance with program requirements.

§ 286.8 Confidentiality of information.

All information collected relative to an applicant during an evaluation is maintained as confidential. Information is released only as required under the terms of the Freedom of Information Act or other legal requirement, subject to the rules of the Department of Commerce for such disclosure as found in 15 CFR part 4.

§ 286.9 Maintaining recognized status.

Each program participant remaining in the program shall continuously meet all program requirements and cooperate with NIST in the conduct of all surveillance and reassessment activities. Participants shall reimburse NIST for expenses incurred for these purposes.

§ 286.10 Appeal.

Any applicant or other affected party may appeal to the NIST Director any action taken under the program. When appropriate, the Director may seek an independent review by the Deputy Chief Counsel.

§ 286.11 Listings.

(a) NIST maintains lists of all bodies holding current NIST program certificates, together with the assessment areas for which they are issued.

(b) NIST also maintains lists of those qualified conformity assessment bodies that are currently accredited by bodies recognized by NIST, along with the activities of the assessment bodies within the scope of the NIST recognition program.

(c) The lists are made available to the public through various media, e.g., printed directories, electronic bulletin boards, or other means to ensure accessibility by all potential users.

(d) With respect to the lists specified in paragraph (a) and (b) of this section, NIST may delist any body if it determines the action to be in the public interest.

§ 286.12 Terminations.

(a) *Voluntary termination.* Any participant may voluntarily terminate participation at any time by written notification to NIST.

(b) *Involuntary termination.* If a participant does not continue to meet all program requirements, or if NIST determines it to be necessary in the public interest, NIST may withdraw that participant's certificate. A body that has had its status as a certificate holder terminated may reapply when prepared to demonstrate full conformance with program requirements.

PART 287—GUIDANCE ON FEDERAL CONFORMITY ASSESSMENT

Sec.

287.1 Purpose and scope of this guidance.

287.2 Definitions.

287.3 Responsibilities of the National Institute of Standards and Technology.

287.4 Responsibilities of Federal agencies.

287.5 Responsibilities of an Agency Standards Executive.

AUTHORITY: Sec. 12, Pub. L. 104-113, 110 Stat. 782 (15 U.S.C. 272).

SOURCE: 65 FR 48900, Aug. 10, 2000, unless otherwise noted.

§ 287.1 Purpose and scope of this guidance.

(a) This part provides guidance for each Federal agency to use in evaluating the efficacy and efficiency of its conformity assessment activities. Each agency should coordinate its conformity assessment activities with those of other appropriate government agencies and with those of the private sector to reduce unnecessary duplication. This guidance is intended to help Federal agencies improve the management and coordination of their own conformity assessment activities with respect to other government entities and the private sector. This will help ensure more productive use of the increasingly limited Federal resources available to conduct conformity assessment activities. This will also support the role of the U.S. Government in pursuing international trade and other related negotiations and agreements with foreign countries and U.S. industry in pursuing agreements with foreign national and international private sector organizations.

(b) This guidance applies to all agencies, which set policy for, manage, operate, or use conformity assessment activities and results, both domestic and international, except for activities carried out pursuant to treaties.

(c) This guidance does not preempt the agencies' authority and responsibility to make regulatory or procurement decisions authorized by statute or required to meet programmatic objectives and requirements. These decision-making activities include: determining the level of acceptable regulatory or procurement risk; setting the

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level of protection; balancing risk, cost and availability of technology (where statutes permit) in establishing regulatory and procurement objectives; and determining or implementing procurement or regulatory requirements necessary to meet programmatic or regulatory objectives. Each agency retains broad discretion in its selection and use of regulatory and procurement conformity assessment practices and may elect not to use or recognize alternative conformity assessment practices if the agency deems them to be inappropriate, inadequate, or inconsistent with statutory criteria or programmatic objectives and requirements. Nothing contained herein shall give any party any claim or cause of action against the Federal government or any agency thereof. Each agency remains responsible for representation of the agency's views on conformity assessment in matters under its jurisdiction. Each agency also remains the primary point of contact for information on the agency's regulatory and procurement conformity assessment actions.

§ 287.2 Definitions.¹

Accreditation means a procedure used to provide formal notice that a body or person is competent to carry out specific tasks. These tasks include: sampling and testing; inspection; certification; and registration.²

Agency means any Executive Branch Department, independent commission, board, bureau, office, agency, government-owned or controlled corporation,

¹Definitions of accreditation, certification, conformity assessment, inspection, supplier's declaration of conformity, registration and testing are based on the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), Guide 2 (1996). In certain industrial sectors, it is recognized that organizations other than ISO or IEC may issue definitions relevant to conformity assessment, such as the Codex Alimentarius Commission with respect to the food industry sector.

²For some agencies, accreditation may mean that a body or person meets requirements defined in a specific section(s) of the CFR. The referenced section(s) may include only limited requirements for demonstration of technical competency.

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or other establishment of the Federal government. It also includes any regulatory commission or board, except for independent regulatory commission subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment activities. It does not include the legislative or judicial branches of the Federal government.

Agency Standards Executive means an official designated by an agency as its representative on the Interagency Committee for Standards Policy (ICSP) and delegated the responsibility for agency implementation of OMB Circular A-119 and the guidance in this part.

Certification means a procedure used to provide written assurance that a product, process, service, or person's qualifications conforms to specified requirements.

Conformity assessment means any activity concerned with determining directly or indirectly that requirements are fulfilled. Requirements for products, services, systems, and organizations are those defined by law or regulation or by an agency in a procurement action. Conformity assessment includes: sampling and testing; inspection; supplier's declaration of conformity; certification; and quality and environmental management system assessment and registration. It also includes accreditation and recognition. Conformity assessment does not include mandatory administrative procedures (such as registration notification) for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions. Conformity assessment activities may be conducted by the supplier (first party) or by the buyer (second party) either directly or by another party on the supplier's or buyer's behalf, or by a body not under the control or influence of either the buyer or the seller (third party).

Inspection is defined as the evaluation by observation and judgment accompanied as appropriate by measurement, testing or gauging of the conformity of a product, process or service to specified requirements.

NIST means the National Institute of Standards and Technology, an agency

within the United States Department of Commerce.

Recognition means a procedure used to provide formal notice that an accreditation body is competent to carry out specific tasks. These tasks include: the accreditation of testing laboratories and inspection, certification, and registration bodies. A governmental recognition system is a set of one or more procedures used by a Federal agency to provide recognition.

Registration means a procedure used to give written assurance that a system conforms to specified requirements. Such systems include those established for the management of product, process or service quality and environmental performance.

Sampling means the selection of one or more specimens of a product, process, or service for the purpose of evaluating the conformity of the product, process or service to specified requirements.

Supplier's declaration of conformity means a procedure by which a supplier gives written assurance that a product, process, service or organization conforms to specified requirements.

Testing means the action of carrying out one or more technical operations (tests) that determine one or more characteristics or performance of a given product, material, equipment, organism, person's qualifications, physical phenomenon, process, or service according to a specified technical procedure (test method).

§ 287.3 Responsibilities of the National Institute of Standards and Technology.

(a) Work with agencies through the Interagency Committee on Standards Policy (ICSP) to coordinate Federal, state and local conformity assessment activities with private sector conformity assessment activities. NIST chairs the ICSP; assists the ICSP in developing and publishing policies and guidance on conformity assessment related issues; collects and disseminates information on Federal, state and private sector conformity assessment activities; and increases public awareness of the importance of conformity assessment and nature and extent of national

and international conformity assessment activities.

(b) Encourage participation in the ICSP by all affected agencies and ensure that all agency views on conformity assessment are considered.

(c) To the extent that resources are available, develop information on state conformity assessment practices; and, upon request by a state government agency, work with that state agency to reduce duplication and complexity in state conformity assessment activities.

(d) Review within three years from August 10, 2000, the effectiveness of the final guidance and recommend modifications to the Secretary as needed.

§ 287.4 Responsibilities of Federal agencies.

Each agency should:

(a) Implement the policies contained in the guidance in this part.

(b) Provide a rationale for its use of specified conformity assessment procedures and processes in rulemaking and procurement actions to the extent feasible. Further, when notice and comment rulemaking is otherwise required, each agency should provide the opportunity for public comment on the rationale for the agency's conformity assessment decision.

(c) Use the results of other governmental agency and private sector organization conformity assessment activities to enhance the safety and efficacy of proposed new conformity assessment requirements and measures. An example of this would be to collect and review information on similar activities conducted by other Federal, state and international organizations and agencies and private sector organizations to determine if the results of these activities can be used to improve the effectiveness of a proposed Federal agency conformity assessment activity.

(d) Use relevant guides or standards for conformity assessment practices published by domestic and international standardizing bodies as appropriate in meeting regulatory and procurement objectives. Guides and standards for sampling, testing, inspection, certification, quality and environmental management systems, management system registration and accreditation are issued by organizations

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which include, but are not limited to, the American National Standards Institute, the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunications Union (ITU) and the Organization for Economic Cooperation and Development (OECD), the World Health Organization (WHO), and the Codex Alimentarius Commission. Each agency retains responsibility for determining which, if any, of these documents are relevant to its needs.

(e) Identify appropriate private sector conformity assessment practices and programs and consider the results of such practices and/or programs as appropriate in existing regulatory and procurement actions. Responsibility for the determination of appropriateness rests with each agency. Examples: an agency could use the results of private sector or other governmental conformity assessment activities to schedule procurement type audits more effectively. This could allow agencies to reduce the number and extent of audits conducted at companies which are performing in accordance with contract specifications and which are under review by a third party or another agency and to concentrate agency audit efforts on companies which have shown problems in conforming to contract specifications. Another example is the Federal Communications Commission's (FCC) Telecommunication Certification Body (TCB) program, which allows designated private entities to issue telecommunications equipment approvals for specified regulatory requirements. In addition, under Part 15, FCC premarketing approval requirements for certain types of equipment have been replaced with suppliers declaration of conformity to the regulations, provided test results supporting the declaration are obtained from an accredited testing lab.

(f) Consider using the results of other agencies' conformity assessment procedures. Example: An agency could use the results of another agency's inspection/audit of a supplier to eliminate or reduce the scope of its own inspection/audit of that supplier.

(g) Participate in efforts designed to improve coordination among govern-

mental and private sector conformity assessment activities. These efforts include, but are not limited to, the National Cooperation for Laboratory Accreditation (NACLA) organization, the National Environmental Laboratory Accreditation (NELAC), the International Organizations for Standardization's (ISO) Committee on Conformity Assessment (CASCO), conformity assessment related activities of the American National Standards Institute (ANSI), and ICSP working groups dealing with conformity assessment issues.

(h) Work with other agencies to avoid unnecessary duplication and complexity in Federal conformity assessment activities. Examples: An agency can participate in another agency's conformity assessment activities by conducting joint procurement audits/inspections of suppliers that sell to both agencies. An agency can share conformity assessment information with other agencies. An agency can use conformity assessment information provided by other agencies to the extent appropriate to improve the effectiveness and efficiency in its own conformity assessment activities. Conformity assessment information may include: Conformity assessment procedures and results, technical data on the operation of conformity assessment programs, processing methods and requirements for applications, fees, facility site data, complaint review procedures, and confidentiality procedures.

(i) Encourage domestic and international recognition of U.S. conformity assessment results by supporting the work of the U.S. Government in international trade and related negotiations with foreign countries and U.S. industry in pursuing agreements with foreign national and international private sector organizations and any resulting activities/requirements resulting from those negotiations/agreements.

(j) Participate in the development of private sector conformity assessment standards to ensure that Federal viewpoints are represented.

(k) Work with other agencies to harmonize Federal requirements for quality and environmental management systems for use in procurement and

regulation, including provisions which will allow the use of one quality or environmental management system per supplier facility in the Federal procurement process and the sharing and usage of audit results and related information as appropriate.

(l) Work with other ICSP members, NIST, and the private sector to develop national infrastructures for coordinating and harmonizing U.S. conformity assessment needs, practices and requirements in support of the efforts of the U.S. Government and U.S. industry to increase international market access for U.S. products.

(m) Work with other ICSP members, NIST, and the private sector as necessary and appropriate to establish criteria for the development and implementation of governmental recognition systems to meet government recognition requirements imposed by other nations and regional groups to support the efforts of the U.S. Government to facilitate international market access for U.S. products.

(n) Assign an Agency Standard Executive responsibility for coordinating the agency-wide implementation of the guidance in this part.

§ 287.5 Responsibilities of an Agency Standards Executive.

In addition to carrying out the duties described in OMB Circular A-119 related to standards activities, an Agency Standards Executive should:

(a) Promote the following goals:

(1) Effective use of agency conformity assessment related resources and participation in conformity assessment related activities of agency interest.

(2) Development and dissemination of agency technical and policy positions.

(3) Development of agency positions on conformity assessment related issues that are in the public interest.

(b) Ensure that agency participation in conformity assessment related activities is consistent with agency missions, authorities, priorities, and budget.

(c) Cooperate with NIST in carrying out agency responsibilities under the guidance in this part.

(d) Consult with NIST, as necessary, in the development and issuance of internal agency procedures and guidance implementing the policies in this part.

(e) Establish an ongoing process for reviewing his/her agency's existing conformity assessment activities and identifying areas where efficiencies can be achieved through coordination with other agency and private sector conformity assessment activities.

(f) Work with other parts of his/her agency to develop and implement improvements in agency conformity assessment related activities.

(g) Report to NIST, on a voluntary basis, on agency conformity assessment activities for inclusion in the annual report to the Office of Management and Budget (OMB) on the agency's implementation of OMB Circular A-119.

SUBCHAPTER K—ADVANCED TECHNOLOGY PROGRAM PROCEDURES

PART 290—REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

- Sec.
- 290.1 Purpose.
 - 290.2 Definitions.
 - 290.3 Program description.
 - 290.4 Terms and schedule of financial assistance.
 - 290.5 Basic proposal qualifications.
 - 290.6 Proposal evaluation and selection criteria.
 - 290.7 Proposal selection process.
 - 290.8 Reviews of centers.
 - 290.9 Intellectual property rights.

AUTHORITY: 15 U.S.C. 278k.

SOURCE: 55 FR 38275, Sept. 17, 1990, unless otherwise noted.

§ 290.1 Purpose.

This rule provides policy for a program to establish Regional Centers for the Transfer of Manufacturing Technology as well as the prescribed policies and procedures to insure the fair, equitable and uniform treatment of proposals for assistance. In addition, the rule provides general guidelines for the management of the program by the National Institute of Standards and Technology, as well as criteria for the evaluation of the Centers, throughout the lifecycle of financial assistance to the Centers by the National Institute of Standards and Technology.

§ 290.2 Definitions.

(a) The phrase *advanced manufacturing technology* refers to new technologies which have recently been developed, or are currently under development, for use in product or part design, fabrication, assembly, quality control, or improving production efficiency.

(b) The term *Center* or *Regional Center* means a NIST-established Regional Center for the Transfer of Manufacturing Technology described under these procedures.

(c) The term *operating award* means a cooperative agreement which provides funding and technical assistance to a

Center for purposes set forth in §290.3 of these procedures.

(d) The term *Director* means the Director of the National Institute of Standards and Technology.

(e) The term *NIST* means the National Institute of Standards and Technology, U.S. Department of Commerce.

(f) The term *Program* or *Centers Program* means the NIST program for establishment of, support for, and cooperative interaction with Regional Centers for the Transfer of Manufacturing Technology.

(g) The term *qualified proposal* means a proposal submitted by a nonprofit organization which meets the basic requirements set forth in §290.5 of these procedures.

(h) The term *Secretary* means the Secretary of Commerce.

(i) The term *target firm* means those firms best able to absorb advanced manufacturing technologies and techniques, especially those developed at NIST, and which are already well prepared in an operational, management and financial sense to improve the levels of technology they employ.

§ 290.3 Program description.

(a) The Secretary, acting through the Director, shall provide technical and financial assistance for the creation and support of Regional Centers for the Transfer of Manufacturing Technology. Each Center shall be affiliated with a U.S.-based nonprofit institution or organization which has submitted a qualified proposal for a Center Operating Award under these procedures. Support may be provided for a period not to exceed six years. The Centers work with industry, universities, nonprofit economic development organizations and state governments to transfer advanced manufacturing technologies, processes, and methods as defined in §290.2 to small and medium sized firms. These technology transfer efforts focus on the continuous and incremental improvement of the target firms. The advanced manufacturing technology which is the focus of the

Centers is the subject of research in NIST's Automated Manufacturing Research Facility (AMRF). The core of AMRF research has principally been applied in discrete part manufacturing, including electronics, composites, plastics, and metal parts fabrication and assembly. Centers will be afforded the opportunity for interaction with the AMRF and will be given access to research projects and results to strengthen their technology transfer. Where elements of a solution are available from an existing source, they should be employed. Where private-sector consultants who can meet the needs of a small- or medium-sized manufacturer are available, they should handle the task. Each Center should bring to bear the technology expertise described in §290.3(d) to assist small- and medium-sized manufacturing firms in adopting advanced manufacturing technology.

(b) *Program objective.* The objective of the NIST Manufacturing Technology Centers is to enhance productivity and technological performance in United States manufacturing. This will be accomplished through:

(1) The transfer of manufacturing technology and techniques developed at NIST to Centers and, through them, to manufacturing companies throughout the United States;

(2) The participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, NIST in cooperative technology transfer activities;

(3) Efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

(4) The active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies; and

(5) The utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than NIST.

(c) *Center activities.* The activities of the Centers shall include:

(1) The establishment of automated manufacturing systems and other advanced production technologies based

on research by NIST and other Federal laboratories for the purpose of demonstrations and technology transfer;

(2) The active transfer and dissemination of research findings and Center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and

(3) Loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.

(d) *Center organization and operation.* Each Center will be organized to transfer advanced manufacturing technology to small and medium sized manufacturers located in its service region. Regional Centers will be established and operated via cooperative agreements between NIST and the award-receiving organizations. Individual awards shall be decided on the basis of merit review, geographical diversity, and the availability of funding.

(e) *Leverage.* The Centers program must concentrate on approaches which can be applied to other companies, in other regions, or by other organizations. The lessons learned in assisting a particular target firm should be documented in order to facilitate the use of those lessons by other target firms. A Center should build on unique solutions developed for a single company to develop techniques of broad applicability. It should seek wide implementation with well-developed mechanisms for distribution of results. Leverage is the principle of developing less resource-intensive methods of delivering technologies (as when a Center staff person has the same impact on ten firms as was formerly obtained with the resources used for one, or when a project once done by the Center can be carried out for dozens of companies by the private sector or a state or local organization.) Leverage does not imply a larger non-federal funding match (that is, greater expenditure of non-federal dollars for each federal dollar) but rather a greater impact per dollar.

(f) *Regional impact.* A new Center should not begin by spreading its resources too thinly over too large a geographic area. It should concentrate

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first on establishing its structure, operating style, and client base within a manageable service area.

§ 290.4 Terms and schedule of financial assistance.

(a) NIST may provide financial support to any Center for a period not to exceed six years, subject to the availability of funding and continued satisfactory performance. Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards. NIST may not provide more than 50 percent of the capital and annual operating and maintenance required to create and maintain such Center. Allowable capital costs may be treated as an expense in the year expended or obligated.

(b) *NIST contribution.* The funds provided by NIST may be used for capital and operating and maintenance expenses. Each Center will operate on one-year, annually renewable cooperative agreements, contingent upon successful completion of informal annual reviews. Funding can not be provided after the sixth year of support. A formal review of each Center will be conducted during its third year of operation by an independent Merit Review Panel in accordance with § 290.8 of these procedures. Centers will be required to demonstrate that they will be self-sufficient by the end of six years of operation. The amount of NIST investment in each Center will depend upon the particular requirements, plans, and performance of the Center, as well as the availability of NIST funds. NIST may support the budget of each Center on a matching-funds basis not to exceed the Schedule of Financial Assistance outlined in Table 1. The remaining portion of the Center's funding shall be provided by the host organization.

TABLE 1—SCHEDULE OF NIST MATCHING FUNDS

Year of center operation	Maximum NIST share
1-3	1/2
4	2/5
5-6	1/3

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(c) *Host contribution.* The host organization may count as part of its share:

- (1) Dollar contributions from state, county, city, industrial, or other sources;
- (2) Revenue from licensing and royalties;
- (3) Fees for services performed,
- (4) In-kind contributions of full-time personnel,
- (5) In-kind contribution of part-time personnel, equipment, software, rental value of centrally located space (office and laboratory) and other related contributions up to a maximum of one-half of the host's annual share. Allowable capital expenditures may be applied in the award year expended or in subsequent award years.

[55 FR 38275, Sept. 17, 1990, as amended at 59 FR 22505, May 2, 1994]

§ 290.5 Basic proposal qualifications.

(a) NIST shall designate each proposal which satisfies the qualifications criteria below as "qualified proposal" and subject the qualified proposals to a merit review. Applications which do not meet the requirements of this section will not receive further consideration.

(1) *Qualified organizations.* Any non-profit institution, or group thereof, or consortium of nonprofit institutions, including entities which already exist or may be incorporated specifically to manage the Center.

(2) *Proposal format.* Proposals for Center Operating Awards shall:

- (i) Be submitted with a Standard Form 424 to the above address;
- (ii) *Not exceed 25 typewritten pages in length for the basic proposal document* (which must include the information requirements of paragraph (a)(3) of this section); it may be accompanied by additional appendices of relevant supplementary attachments and tabular material. Basic proposal documents which exceed 25 pages in length will not be qualified for further review.

(3) *Proposal requirements.* In order to be considered for a Center Operating Award, proposals must contain:

- (i) A plan for the allocation of intellectual property rights associated with any invention or copyright which may result from the involvement in the

Center's technology transfer or research activities consistent with the conditions of § 290.9;

(ii) A statement which provides adequate assurances that the host organization will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the following three additional years. Applicants should provide evidence that the proposed Center will be self-supporting after six years.

(iii) A statement describing linkages to industry, government, and educational organizations within its service region.

(iv) A statement defining the initial service region including a statement of the constituency to be served and the level of service to be provided, as well as outyear plans.

(v) A statement agreeing to focus the mission of the Center on technology transfer activities and not to exclude companies based on state boundaries.

(vi) A proposed plan for the annual evaluation of the success of the Center by the Program, including appropriate criteria for consideration, and weighting of those criteria.

(vii) A plan to focus the Center's technology emphasis on areas consistent with NIST technology research programs and organizational expertise.

(viii) A description of the planned Center sufficient to permit NIST to evaluate the proposal in accordance with § 290.6 of these procedures.

(b) [Reserved]

§ 290.6 Proposal evaluation and selection criteria.

(a) In making a decision whether to provide financial support, NIST shall review and evaluate all qualified proposals in accordance with the following criteria, assigning equal weight to each of the four categories.

(1) *Identification of target firms in proposed region.* Does the proposal define an appropriate service region with a large enough population of target firms of small- and medium-sized manufacturers which the applicant understands and can serve, and which is not presently served by an existing Center?

(i) *Market analysis.* Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(ii) *Geographical location.* Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of Centers will be a factor in evaluation of proposals; a proposal for a Center located near an existing Center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

(2) *Technology resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in these procedures?

(3) *Technology delivery mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers?

(i) *Linkages.* Development of effective partnerships or linkages to third parties such as industry, universities, non-profit economic organizations, and state governments who will amplify the Center's technology delivery to reach a large number of clients in its service region.

(ii) *Program leverage.* Provision of an effective strategy to amplify the Center's technology delivery approaches to achieve the proposed objectives as described in § 290.3(e).

(4) *Management and financial plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective Center?

(i) *Organizational structure.* Completeness and appropriateness of the organizational structure, and its focus on the mission of the Center. Assurance of full-time top management of the Center.

(ii) *Program management.* Effectiveness of the planned methodology of program management.

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(iii) *Internal evaluation.* Effectiveness of the planned continuous internal evaluation of program activities.

(iv) *Plans for financial matching.* Demonstrated stability and duration of the applicant's funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments. Evidence of the applicant's ability to become self-sustaining in six years.

(v) *Budget.* Suitability and focus of the applicant's detailed one-year budget and six-year budget outline.

§ 290.7 Proposal selection process.

Upon the availability of funding to establish Regional Centers, the Director shall publish a notice in the FEDERAL REGISTER requesting submission of proposals from interested organizations. Applicants will be given an established time frame, not less than 60 days from the publication date of the notice, to prepare and submit a proposal. The proposal evaluation and selection process will consist of four principal phases: Proposal qualification; Proposal review and selection of finalists; Finalist site visits; and, Award determination. Further descriptions of these phases are provided in the following:

(a) *Proposal qualification.* All proposals will be reviewed by NIST to assure compliance with § 290.5 of these procedures. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

(b) *Proposal review and selection of finalists.* The Director of NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the criteria set forth in section 290.6 of these procedures, assigning equal weight to each of the four categories. From the qualified proposals, a group of finalists will be selected based on this review.

(c) *Finalist site visits.* NIST representatives will visit each finalist organization. Finalists will be reviewed and assigned numeric scores using the criteria set forth in § 290.6 of these procedures assigning equal weight to each of

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the four categories. NIST may enter into negotiations with the finalists concerning any aspect of their proposal.

(d) *Award determination.* The Director of NIST or his designee shall select awardees for Center Operating Awards based upon the rank order of applicants, the need to assure appropriate regional distribution, and the availability of funds. Upon the final award decision, a notification will be made to each of the proposing organizations.

§ 290.8 Reviews of centers.

(a) *Overview.* Each Center will be reviewed at least annually, and at the end of its third year of operation according to the procedures and criteria set out below. There will be regular management interaction with NIST and the other Centers for the purpose of evaluation and program shaping. Centers are encouraged to try new approaches, must evaluate their effectiveness, and abandon or adjust those which do not have the desired impact.

(b) *Annual reviews of centers.* Centers will be reviewed annually as part of the funding renewal process using the criteria set out in § 290.8(d). The funding level at which a Center is renewed is contingent upon a positive program evaluation and will depend upon the availability of federal funds and on the Center's ability to obtain suitable match, as well as on the budgetary requirements of its proposed program. Centers must continue to demonstrate that they will be self-supporting after six years.

(c) *Third year review of centers.* Each host receiving a Center Operating Award under these procedures shall be evaluated during its third year of operation by a Merit Review Panel appointed by the Secretary of Commerce. Each such Merit Review Panel shall be composed of private experts, none of whom shall be connected with the involved Center, and Federal officials. An official of NIST shall chair the panel. Each Merit Review Panel shall measure the involved Center's performance against the criteria set out in § 290.8(d). The Secretary shall not provide funding for the fourth through the sixth years of such Center's operation unless the evaluation is positive on all

grounds. As a condition of receiving continuing funding, the Center must show evidence at the third year review that they are making substantial progress toward self-sufficiency. If the evaluation is positive and funds are available, the Secretary of Commerce may provide continued funding through the sixth year at declining levels, which are designed to insure that the Center no longer needs financial support from NIST by the seventh year. In no event shall funding for a Center be provided by the NIST Manufacturing Technology Centers Program after the sixth year of support.

(d) *Criteria for annual and third year reviews.* Centers will be evaluated under the following criteria in each of the annual reviews, as well as the third year review:

(1) The program objectives specified in §290.3(b) of these procedures;

(2) Funds-matching performance;

(3) The extent to which the target firms have successfully implemented recently developed or currently developed advanced manufacturing technology and techniques transferred by the Center;

(4) The extent to which successes are properly documented and there has been further leveraging or use of a particular advanced manufacturing technology or process;

(5) The degree to which there is successful operation of a network, or technology delivery mechanism, involving the sharing or dissemination of information related to manufacturing technologies among industry, universities, nonprofit economic development organizations and state governments.

(6) The extent to which the Center can increasingly develop continuing resources—both technological and financial—such that the Centers are finally financially self-sufficient.

§290.9 Intellectual property rights.

(a) Awards under the Program will follow the policies and procedures on ownership to inventions made under grants and cooperative agreements that are set out in Public Law 96-517 (35 U.S.C. chapter 18), the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies Dated Feb-

ruary 18, 1983, and part 401 of title 37 of the Code of Federal Regulations, as appropriate. These policies and procedures generally require the Government to grant to Centers selected for funding the right to elect to obtain title to any invention made in the course of the conduct of research under an award, subject to the reservation of a Government license.

(b) Except as otherwise specifically provided for in an Award, Centers selected for funding under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

PART 291—MANUFACTURING EXTENSION PARTNERSHIP; ENVIRONMENTAL PROJECTS

Sec.

291.1 Program description.

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291.6 Additional requirements; Federal policies and procedures.

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AUTHORITY: 15 U.S.C. § 272(b)(1) and (c)(3) and § 2781.

SOURCE: 60 FR 4082, Jan. 20, 1995, unless otherwise noted.

§ 291.1 Program description.

(a) In accordance with the provisions of the National Institute of Standards and Technology Act (15 U.S.C. § 272(b)(1) and (c)(3) and § 2781), as amended, NIST will provide financial assistance to integrate environmentally-related services and resources into the national manufacturing extension system. This assistance will be provided by NIST often in cooperation with the EPA. Under the NIST Manufacturing Extension Partnership (MEP), NIST will periodically make merit-based awards to existing MEP manufacturing extension affiliates for integration of environmental services into extension centers and to non-profit organizations for development of environmentally-related tools and techniques. In addition, NIST will initiate pilot centers providing environmental information for specific industrial sectors to be specified in solicitations. MEP assumes a broad definition of manufacturing, and recognizes a wide range of technology and concepts, including durable goods production; chemical, biotechnology, and other materials processing; electronic component and system fabrication; and engineering services associated with manufacturing, as lying within the definition of manufacturing.

(b) *Announcements of solicitations.* Announcements of solicitations will be made in the Commerce Business Daily. Specific information on the level of funding available and the deadline for proposals will be contained in that announcement. In addition, any specific industry sectors or types of tools and techniques to be focused on will be specified in the announcement.

(c) *Proposal workshops.* Prior to an announcement of solicitation, NIST may announce opportunities for potential applicants to learn about these projects through workshops. The time and place of the workshop(s) will be contained in a Commerce Business Daily announcement.

(d) *Indirect costs.* The total dollar amount of the indirect costs proposed

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in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

(e) *Proposal format.* The Proposal must not exceed 20 typewritten pages in length for integration proposals. Proposals for tools and techniques projects and national information centers must not exceed 30 pages in length. The proposal must contain both technical and cost information. The Proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such that pages are single-sided, with no more than fifty-five (55) lines per page. Use 21.6×27.9 cm (8½"×11") paper or A4 metric paper. Use an easy-to-read font of not more than about 5 characters per cm (fixed pitch font of 12 or fewer characters per inch or proportional font of point size 10 or larger). Smaller type may be used in figures and tables, but must be clearly legible. Margins on all sides (top, bottom, left and right) must be at least 2.5 cm. (1"). The applicant may submit a separately bound document of appendices, containing letters of support for the Basic Proposal. The basic proposal should be self-contained and not rely on the appendices for meeting criteria. Excess pages in the Proposal will not be considered in the evaluation. Applicants must submit one signed original plus six copies of the proposal along with Standard Form 424, 424A (Rev 4/92) and Form CD-511.

(f) *Content of basic proposal.* The Basic Proposal must, at a minimum, include the following:

(1) An executive summary summarizing the planned project consistent with the Evaluation Criteria stated in this notice.

(2) A description of the planned project sufficient to permit evaluation of the proposal in accordance with the proposal Evaluation Criteria stated in this notice.

(3) A budget for the project which identifies all sources of funds and which breaks out planned expenditures by both activity and object class (e.g., personnel, travel, etc.).

(4) A description of the qualifications of key personnel who will be assigned to work on the proposed project.

(5) A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.

(6) A Standard Form 424, 424A (Rev 4-92) prescribed by the applicable OMB circular and Form CD-511, Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. SF-424, 424A (Rev 4-92) and Form CD-511 will not be considered part of the page count of the Basic Proposal.

(7) The application requirements and the standard form requirements have been approved by OMB (OMB Control Number 0693-0010, 0348-0043 and 0348-0044).

(g) *Applicable federal and departmental guidance.* This includes: Administrative Requirements, Cost Principles, and Audits. [Dependent upon type of Recipient organization: nonprofit, for-profit, state/local government, or educational institution]

(1) *Nonprofit organizations.*

(i) OMB Circular A-110—Uniform Administrative Requirements of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(ii) OMB Circular A-122—Cost Principles for Nonprofit Organizations.

(iii) 15 CFR part 29b—Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations [implements OMB Circular A-133—Audits for Institutions of Higher Education and Other Nonprofit Organizations].

(2) *State/local governments.*

(i) 15 CFR part 24—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(ii) OMB Circular A-87—Cost Principles for State and Local Governments.

(iii) 15 CFR part 29a—Audit Requirements for State and Local Govern-

ments [implements OMB Circular A-128—Audit of State and Local Governments].

(3) *Educational institutions.*

(i) OMB Circular A-110—Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(ii) OMB Circular A-21—Cost Principles for Educational Institutions.

(iii) 15 CFR part 29b—Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations [implements OMB Circular A-133—Audits for Institutions of Higher Education and Other Nonprofit Organizations].

§ 291.2 Environmental integration projects.

(a) *Eligibility criteria.* Eligible applicants for these projects are manufacturing extension centers or state technology extension programs which at the time of solicitation have grants, cooperative agreements or contracts with the NIST Manufacturing Extension Partnership. Only one proposal per organization per solicitation is permitted in this category.

(b) *Project objective.* The purpose of these projects is to support the integration of environmentally-focused technical assistance, and especially pollution prevention assistance, for smaller manufacturers into the broader services provided by existing MEP manufacturing extension centers. Proposers are free to structure their project in whatever way will be most effective and efficient in increasing the ability of the center to deliver high quality environmental and pollution prevention technical assistance (either directly or in partnership with other organizations). Following are some examples of purposes for which these funds could be used. This list is by no means meant to be all inclusive. A center might propose a set of actions encompassing several of these examples as well as others.

(1) *Environmental needs assessment.* Detailed assessment of the environmentally-related technical assistance needs of manufacturers within the state or region of the manufacturing extension center. This would be done as

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part of a broader plan to incorporate environmentally related services into the services of the manufacturing extension center. The center might propose to document its process and findings so that other centers may learn from its work.

(2) *Partnership with another organization.* The center might propose to partner with an existing organization which is providing environmentally-focused technical assistance to manufacturers. The partnership would lead to greater integration of service delivery through joint technical assistance projects and joint training.

(3) *Accessing private-sector environmental resources.* The center might propose to increase its ability to access environmental technical services for smaller manufacturers from environmental consultants or environmental firms.

(4) *Training of field engineers/agents in environmental topics.* Funding for training which empowers the field engineer/agent with the knowledge needed to recognize potential environmental, and especially pollution prevention, problems and opportunities. In addition, training might be funded which empowers the field engineer/agent with the knowledge needed to make appropriate recommendations for solutions or appropriate referrals to other sources of information or expertise. The over-arching goal is for the field engineer/agent to enable the manufacturer to be both environmentally clean and competitive.

(5) *Access to environmentally related information or expertise.* A center might propose to fund access to databases or other sources of environmentally-related information or expertise which might be necessary to augment the environmentally focused activities of the manufacturing extension center.

(6) *Addition of environmentally focused staff.* It may be necessary for manufacturing extension centers to have an environmental program manager or lead field engineer/agent with environmental training and experience. Funds could be requested to hire this person. However, the proposer would have to demonstrate a clear and reasonable plan for providing for the support of this person after the funds provided

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under this project are exhausted since no commitment is being made to ongoing funding.

(c) *Award period.* Projects initiated under this category may be carried out over multiple years. The proposer should include optional second and third years in their proposal. Proposals selected for award may receive one, two or three years of funding from currently available funds at the discretion of DOC. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. A separate cooperative agreement will be written with winning applicants. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. It is anticipated that successful projects will be given the opportunity to roll the funding for these efforts into the base funding for the extension center. Such a roll-over will be based on a performance review and the availability of funds.

(d) *Matching requirements.* No matching funds are required for these proposals. However, the presence of matching funds (cash and in-kind) will be considered in the evaluation under the Financial Plan criteria.

(e) *Environmental integration projects evaluation criteria.* In most solicitations, preference will be given to projects which are focused on a single industry sector. This is desired to build on the expertise and resources which are being built in tools and resources projects in these industry sectors. Industry focus will be specified in the solicitation announcement. However, actual services need not be limited exclusively to this sector. In addition preference may be given to extension centers which do not have extensive environmentally-related services already in place. In addition to these preferences, the criteria for selection of awards will be as follows in descending order of importance:

(1) *Demonstrated commitment to incorporating environmentally related services.* The extension center must demonstrate its commitment to incorporate environmentally-related technical services into its overall manufacturing extension services even after

funding for this project is exhausted. It is not the objective of this effort to establish completely autonomous environmentally focused extension centers. Rather, the goal is to ensure that such services are integrated directly with general manufacturing extension services focused on competitiveness. The center must demonstrate that such integration will take place. Factors that may be considered include: The amount of matching funds devoted to the efforts proposed as demonstration of the center's commitment to the activity; indication that environmental services are a significant aspect of the organization's long range planning; strength of commitment and plans for continuing service beyond funding which might be awarded through this project; the degree to which environmental services will become an integral part of each field engineers' portfolio of services; the level of current or planned education and training of staff on relevant environmental issues; and the extent of environmentally related information and expert resources which will be easily accessible by field engineers.

(2) *Demonstrated understanding of the environmentally related technical assistance needs of manufacturers in the target population.* Target population must be clearly defined. The manufacturing center must demonstrate that it understands the populations environmentally related needs or include a coherent methodology for identifying those needs. The proposal should show that the efforts being proposed will enable the center to better meet those needs. Factors that may be considered include: A clear definition of the target population, its size and demographic characteristics; demonstrated understanding of the target population's environmental technical assistance needs or a plan to develop this understanding; and appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

(3) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are providing high quality environmentally-related services to manufacturers in the same target population or

which have relevant resources which can be of assistance in the proposed effort. If no such organizations exist, the proposal should build the case that there are no such organizations. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication of services in providing assistance to small and medium-sized manufacturers. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant for providing technology assistance related services to the target population; adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities; and that the proposed activity does not duplicate existing services or resources.

(4) *Program evaluation:* The applicant should specify plans for evaluation of the effectiveness of the proposed program and for ensuring continuous improvement of program activities. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

(5) *Management experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; qualifications of the project team and its leadership to conduct the proposed activity; soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; appropriateness of the organizational approach for carrying out the proposed activity; evidence of involvement and support by private industry.

(6) *Financial plan:* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the

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cooperative agreement has expired. Factors that may be considered include: Reasonableness of the budget both in income and expenses; strength of commitment and amount of the proposer's cost share, if any; effectiveness of management plans for control of budget; appropriateness of matching contributions; and plans for maintaining the program after the cooperative agreement has expired.

§ 291.3 Environmental tools and techniques projects.

(a) *Eligibility criteria.* Eligible applicants for these projects include all non-profit organizations including universities, community colleges, state governments, state technology programs and independent nonprofit organizations. Organizations may submit multiple proposals under this category in each solicitation for unique projects.

(b) *Project objective.* The purpose of these projects is to support the initial development and implementation of tools or techniques which will aide manufacturing extension organizations in providing environmentally-related services to smaller manufacturers and which may also be of direct use by the smaller manufacturers themselves. Specific industry sectors to be addressed and sub-categories of tools and techniques may be specified in solicitations. These sectors or sub-categories will be specified in the solicitation announcement. Examples of tools and techniques include, but are not limited to, manufacturing assessment tools, environmental benchmarking tools, training delivery programs, electronically accessible environmental information resources, environmental demonstration facilities, software tools, etc. Projects must be completed within the scope of the effort proposed and should not require on-going federal support.

(c) *Award period.* Projects initiated under this category may be carried out over up to three years. Proposals selected for award will receive all funding from currently available funds. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the pe-

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riod of performance is at the total discretion of DOC.

(d) *Matching requirements.* No matching funds are required for these proposals. However, the presence of matching funds (cash and in-kind) will be considered in the evaluation under the Financial Plan criteria.

(e) *Environmental tools and techniques projects evaluation criteria.* Proposals from applicants will be evaluated and rated on the basis of the following criteria listed in descending order of importance:

(1) *Demonstrated understanding of the environmentally-related technical assistance needs of manufacturers and technical assistance providers in the target population.* Target population must be clearly defined. The proposal must demonstrate that it understands the population's environmentally related tool or technique needs. The proposal should show that the efforts being proposed meet the needs identified. Factors that may be considered include: A clear definition of the target population, size and demographic distribution; demonstrated understanding of the target population's environmental tools or techniques needs; and appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

(2) *Technology and information sources.* The proposal must delineate the sources of technology and/or information which will be used to create the tool or resource. Sources may include those internal to the center (including staff expertise) or from other organizations. Factors that may be considered include: Strength of core competency in the proposed area of activity; and demonstrated access to relevant technical or information sources external to the organization.

(3) *Degree of integration with the manufacturing extension partnership.* The proposal must demonstrate that the tool or resource will be integrated into and will be of service to the NIST Manufacturing Extension Centers. Factors that may be considered include: Ability to access the tool or resource especially for MEP extension centers; methodology for disseminating or promoting use of the tool or technique especially within the MEP system; and

demonstrated interest in using the tool or technique especially by MEP extension centers.

(4) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are developing or have expertise on similar tools or techniques. If no such organizations exist, the proposal should show that this the case. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant to the proposed project; Adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities; and that the proposed activity does not duplicate existing services or resources.

(5) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed tool or technique and for ensuring continuous improvement of the tool. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

(6) *Management experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; qualifications of the project team and its leadership to conduct the proposed activity; soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; and appropriateness of the organizational approach for carrying out the proposed activity.

(7) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the

cooperative agreement has expired. Factors that may be considerable include: Reasonableness of the budget, both in income and expenses; strength of commitment and amount of the proposers's cost share, if any; effectiveness of management plans for control of budget appropriateness of matching contributions; and plan for maintaining the program after the cooperative agreement has expired.

§ 291.4 National industry-specific pollution prevention and environmental compliance resource centers.

(a) *Eligibility criteria.* Eligible applicants for these projects include all non-profit organizations including universities, community colleges, state governments, state technology programs and independent nonprofit organizations. Only one proposal per organization is permitted in this category.

(b) *Project objective.* These centers will provide easy access to relevant, current, reliable and comprehensive information on pollution prevention opportunities, regulatory compliance and technologies and techniques for reducing pollution in the most competitive manner for a specific industry sector or industrial process. The sector or industrial process to be addressed will be specified in the solicitation. The center will enhance the ability of small businesses to implement risk based pollution prevention alternatives to increase competitiveness and reduce adverse environmental impacts. The center should use existing resources, information and expertise and will avoid duplication of existing efforts. The information provided by the center will create links between relevant EPA Pollution Prevention programs, EPA and other technical information, NIST manufacturing extension efforts, EPA regulation and guidance, and state requirements. The center will emphasize pollution prevention methods as the principal means to both comply with government regulations and enhance competitiveness.

(c) *Project goal.* To improve the environmental and competitive performance of smaller manufacturers by:

(1) Enhancing the national capability to provide pollution prevention and

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regulatory requirements information (federal, state and local) to specific industries.

(2) Providing easy access to relevant and reliable information and tools on pollution prevention technologies and techniques that achieve manufacturing efficiency and enhanced competitiveness with reduced environmental impact.

(3) Providing easy access to relevant and reliable information and tools to enable specific industries to achieve the continued environmental improvement to meet or exceed compliance requirements.

(d) *Project customers.* (1) The customers for this center will be the businesses in the industrial sector or businesses which use the industrial process specified as the focus for the solicitation. In addition, consultants providing services to those businesses, the NIST Manufacturing Extension Centers, and federal state and local programs providing technical, pollution prevention and compliance assistance.

(2) The center should assist the customer in choosing the most cost-effective, environmentally sound options or practices that enhance the company's competitiveness. Assistance must be accessible to all interested customers. The center, wherever feasible, shall use existing materials and information to enhance and develop the services to its customers. The centers should rarely, if ever, perform research, but should find and assimilate data and information produced by other sources. The center should not duplicate any existing distribution system. The center should distribute and provide information, but should not directly provide on-site assistance to customers. Rather, referrals to local technical assistance organizations should be given when appropriate. Information would likely be available through multiple avenues such as phone, fax, electronically accessible data bases, printed material, networks of technical experts, etc.

(e) *Award period.* The pilot initiated under this category may be carried out over multiple years. The proposers should include optional second and third years in their proposal. Proposals selected for award may receive one,

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two or three years of funding from currently available finds at the discretion of DOC. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Successful centers may be given an opportunity to receive continuing funding as a NIST manufacturing center after the expiration of their initial cooperative agreement. Such a roll-over will be based upon the performance of the center and availability of funding.

(f) *Matching requirements.* A matching contribution from each applicant will be required. NIST may provide financial support up to 50% of the total budget for the project. The applicant's share of the budget may include dollar contributions from state, county, industrial or other non-federal sources and non-federal in-kind contributions necessary and reasonable for proper accomplishment of project objectives.

(g) *Resource center evaluation criteria.* Proposals from applicants will be evaluated and rated on the basis of the following criteria listed in descending order of importance:

(1) *Demonstrated understanding of the environmentally-related information needs of manufacturers and technical assistance providers in the target population.* Understanding the environmentally-related needs of the target population (*i.e.*, customers) is absolutely critical to the success of such a resource center. Factors that may be considered include: A clear definition of the target population, size and demographic distribution; demonstrated understanding of the target population's environmentally-related information needs or a clear plan for identifying those customer needs; and methodologies for continually improving the understanding of the target population's environmentally-related information needs.

(2) *Delivery mechanisms.* The proposal must set forth clearly defined, effective mechanisms for delivery of services to target population. Factors that may be considered include: Potential effectiveness and efficiency of proposed delivery systems; and demonstrated capacity to

form the effective linkages and partnerships necessary for success of the proposed activity.

(3) *Technology and information sources.* The proposal must delineate the sources of information which will be used to create the informational foundation of the resource center. Sources may include those internal to the Center (including staff expertise), but it is expected that many sources will be external. Factors that may be considered include: Strength of core competency in the proposed area of activity; demonstrated access to relevant technical or information sources external to the organization.

(4) *Degree of integration with the manufacturing extension partnership and other technical assistance providers.* The proposal must demonstrate that the source center will be integrated into the system of services provided by the NIST Manufacturing Extension Partnership and other technical assistance providers. Factors that may be considered include: Ability of the target population including MEP Extension Centers to access the resource center; and methodology for disseminating or promoting use of the resource center especially within the MEP system.

(5) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are developing or have expertise on similar tools or techniques. If no such organizations exist, the proposal should show that this is the case. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant to the proposed project; and adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities.

(6) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed resource center and for ensuring continuous improvement. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control,

external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance; and the proposer's plan must include documentation, analysis of the results, and must show how the results can be used in improving the resource center.

(7) *Management experience and Plans.* Applicants should specify Plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; qualifications and experience of the project team and its leadership to conduct the proposed activity; soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; and appropriateness of the organizational approach for carrying out the proposed activity.

(8) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that may be considered include: Reasonableness of the budget, both in income and expenses; strength of commitment and amount of the proposer's *cost share*; effectiveness of management plans for control of the budget; and appropriateness of matching contributions.

§ 291.5 Proposal selection process.

The proposal evaluation and selection process will consist of three principal phases: Proposal qualification; proposal review and selection of finalists; and award determination.

(a) *Proposal qualification.* All proposals will be reviewed by NIST to assure compliance with the proposal content and other basic provisions of this notice. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

(b) *Proposal review and selection of finalists.* NIST will appoint an evaluation panel composed of NIST and in some

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cases other federal employees to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this notice. A site visit may be required to make full evaluation of a proposal. From the qualified proposals, a group of finalists will be numerically ranked and recommended for award based on this review.

(c) *Award determination.* The Director of the NIST, or her/his designee, shall select awardees based on total evaluation scores, geographic distribution, and the availability of funds. All three factors will be considered in making an award. Upon the final award decision, a notification will be made to each of the proposing organizations.

§ 291.6 Additional requirements; Federal policies and procedures.

Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

PART 292—MANUFACTURING EXTENSION PARTNERSHIP; INFRASTRUCTURE DEVELOPMENT PROJECTS

Sec.

- 292.1 Program description.
- 292.2 Training development and deployment projects.
- 292.3 Technical tools, techniques, practices, and analyses projects.
- 292.4 Information infrastructure projects.
- 292.5 Proposal selection process.
- 292.6 Additional requirements.

AUTHORITY: 15 U.S.C. 272 (b)(1) and (c)(3) and 2781.

SOURCE: 60 FR 44751, Aug. 29, 1995, unless otherwise noted.

§ 292.1 Program description.

(a) *Purpose.* In accordance with the provisions of the National Institute of Standards and Technology Act (15 U.S.C. 272 (b)(1) and (c)(3) and 2781), as amended, NIST will provide financial assistance to develop the infrastructure of the national manufacturing extension system. Under the NIST Manufacturing Extension Partnership (MEP), NIST will periodically make merit-based awards to develop and de-

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ploy training capability and technical tools, techniques, practices, and analyses. In addition, NIST will develop and implement information infrastructure services and pilots. MEP assumes a broad definition of manufacturing, and recognizes a wide range of technology and concepts, including durable goods production; chemical, biotechnology, and other materials processing; electronic component and system fabrication; and engineering services associated with manufacturing, as lying within the definition of manufacturing.

(b) *Announcements of solicitations.* Announcements of solicitations will be made in the Commerce Business Daily. Specific information on the level of funding available and the deadline for proposals will be contained in that announcement. In addition, any specific industry sectors or types of tools and techniques to be focused on will be specified in the announcement, as well as any further definition of the selection criteria.

(c) *Proposal workshops.* Prior to an announcement of solicitation, NIST may announce opportunities for potential applicants to learn about these projects through workshops. The time and place of the workshop(s) will be contained in a Commerce Business Daily announcement.

(d) *Indirect costs.* The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

(e) *Proposal format.* The proposal must contain both technical and cost information. The proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such that pages are single-sided, with no more than fifty-five (55) lines per page. Use 21.6×27.9 cm (8½"×11") paper or A4 metric paper. Use an easy-to-read font of not more than about 5 characters per

cm (fixed pitch font of 12 or fewer characters per inch or proportional font of point size 10 or larger). Smaller type may be used in figures and tables, but must be clearly legible. Margins on all sides (top, bottom, left and right) must be at least 2.5 cm. (1"). Length limitations for proposals will be specified in solicitations. The applicant may submit a separately bound document of appendices, containing letters of support for the proposal. The proposal should be self-contained and not rely on the appendices for meeting criteria. Excess pages in the proposal will not be considered in the evaluation. Applicants must submit one signed original plus six copies of the proposal and Standard Form 424, 424A, and 424B (Rev 4/92), Standard Form LLL, and Form CD-511. Applicants for whom the submission of six copies presents financial hardship may submit one original and two copies of the application.

(f) *Content of proposal.* (1) The proposal must, at a minimum, include the following:

(i) An executive summary summarizing the planned project consistent with the Evaluation Criteria stated in this part.

(ii) A description of the planned project sufficient to permit evaluation of the proposal in accordance with the proposal Evaluation Criteria stated in this part.

(iii) A budget for the project which identifies all sources of funds and which breaks out planned expenditures by both activity and object class (e.g., personnel, travel, etc.).

(iv) A description of the qualifications of key personnel who will be assigned to work on the proposed project.

(v) A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.

(vi) A completed Standard Form 424, 424A, and 424B (Rev 4-92) prescribed by the applicable OMB circular, Standard Form LLL, and Form CD-511, Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. SF-424, 424A, 424B (Rev 4-92), SF-LLL, and Form CD-511 will not be considered part of the page count of the proposal.

(2) The application requirements and the standard form requirements have been approved by OMB (OMB Control Number 0693-0005, 0348-0043 and 0348-0044).

(g) *Applicable federal and departmental guidance.* The Administrative Requirements, Cost Principles, and Audits are dependent upon type of Recipient organization as follows:

(1) *Nonprofit organizations.* (i) OMB Circular A-110—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(ii) OMB Circular A-122—Cost Principles for Nonprofit Organizations.

(iii) 15 CFR Part 29b—Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations (implements OMB Circular A-133—Audits for Institutions of Higher Education and Other Nonprofit Organizations).

(2) *State/local governments.* (i) 15 CFR Part 24—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(ii) OMB Circular A-87—Cost Principles for State and Local Governments.

(iii) 15 CFR Part 29a—Audit Requirements for State and Local Governments (implements OMB Circular A-128—Audit of State and Local Governments).

(3) *Educational institutions.* (i) OMB Circular A-110—Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(ii) OMB Circular A-21—Cost Principles for Educational Institutions.

(iii) 15 CFR Part 29b—Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations (implements OMB Circular A-133—Audits for Institutions of Higher Education and Other Nonprofit Organizations).

(4) *For-profit organizations.* (i) OMB Circular A-110—Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

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(ii) 48 CFR Part 31—Federal Acquisition Regulation, Contract Cost Principles and Procedures.

(iii) 15 CFR Part 29b—Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations (implements OMB Circular A-133).

(h) *Availability of forms and circulars.*

(1) Copies of forms referenced in this part may be obtained from the Manufacturing Extension Partnership, National Institute of Standards and Technology, Room C121, Building 301, Gaithersburg, MD 20899.

(2) Copies of OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th St., NW, Room 2200, New Executive Office Building, Washington, DC 20503.

§ 292.2 Training development and deployment projects.

(a) *Eligibility criteria.* In general, eligible applicants for these projects include all for-profit and nonprofit organizations including universities, community colleges, state governments, state technology programs and independent nonprofit organizations. However, specific limitations on eligibility may be specified in solicitations. Organizations may submit multiple proposals under this category in each solicitation for unique projects.

(b) *Project objective.* The purpose of these projects is to support the development and deployment of training programs which will aid manufacturing extension organizations in providing services to smaller manufacturers. While primarily directed toward the field agents/engineers of the extension organizations, the training may also be of direct use by the smaller manufacturers themselves. Specific industry sectors to be addressed and sub-categories of training may be specified in solicitations. Examples of training topic areas include, but are not limited to, manufacturing assessment functions, business systems management, quality assurance assistance, and financial management activities. Examples of training program deployment include, but are not limited to, organization and conduct of training courses, development and conduct of train-the-trainer courses, preparations and deliv-

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ery of distance learning activities, and preparation of self-learning and technical-guideline materials. Projects must be completed within the scope of the effort proposed and should not require on-going federal support.

(c) *Award period.* Projects initiated under this category may be carried out over a period of up to three years. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(d) *Matching requirements.* Matching fund requirements for these proposals will be specified in solicitations including the breakdown of cash and in-kind requirements. For those projects not requiring matching funds, the presence of match will be considered in the evaluation under the Financial Plan criteria.

(e) *Training development and deployment projects evaluation criteria.* Proposals will be evaluated and rated on the basis of the following criteria listed in descending order of importance:

(1) *Demonstration that the proposed project will meet the training needs of technical assistance providers and manufacturers in the target population.* The target population must be clearly defined and the proposal must demonstrate that it understands the population's training needs within the proposed project area. The proposal should show that the efforts being proposed meet the needs identified. Factors that may be considered include: A clear definition of the target population, size and demographic distribution; demonstrated understanding of the target population's training needs; and appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

(2) *Development/deployment methodology and use of appropriate technology and information sources.* The proposal must describe the technical plan for the development or deployment of the training, including the project activities to be used in the training development/deployment and the sources of technology and/or information which will be used to create or deploy the

training activity. Sources may include those internal to the proposer or from other organizations. Factors that may be considered include: Adequacy of the proposed technical plan; strength of core competency in the proposed area of activity; and demonstrated access to relevant technical or information sources external to the organization.

(3) *Delivery and implementation mechanisms.* The proposal must set forth clearly defined, effective mechanisms for delivery and/or implementation of proposed services to the target population. The proposal also must demonstrate that training activities will be integrated into and will be of service to the NIST Manufacturing Extension Centers. Factors that may be considered include: Ease of access to the training activity especially for MEP extension centers; methodology for disseminating or promoting involvement in the training especially within the MEP system; and demonstrated interest in the training activity especially by MEP extension centers.

(4) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are developing or have expertise with similar training. If no such organizations exist, the proposal should show that this is the case. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant to the proposed project; adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities; and that the proposed activity does not duplicate existing services or resources.

(5) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed training activity and for ensuring continuous improvement of the training. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity,

and "customer satisfaction" measures of performance.

(6) *Management and organizational experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; qualifications of the project team and its leadership to conduct the proposed activity; soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; and appropriateness of the organizational approach for carrying out the proposed activity.

(7) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that may be considered include: Reasonableness of the budget, both in income and expenses; strength of commitment and amount of the proposer's cost share, if any; effectiveness of management plans for control of budget; appropriateness of matching contributions; and plan for maintaining the program after the cooperative agreement has expired.

§ 292.3 Technical tools, techniques, practices, and analyses projects.

(a) *Eligibility criteria.* In general, eligible applicants for these projects include all for profit and nonprofit organizations including universities, community colleges, state governments, state technology programs and independent nonprofit organizations. However, specific limitations on eligibility may be specified in solicitations. Organizations may submit multiple proposals under this category in each solicitation for unique projects.

(b) *Project objective.* The purpose of these projects is to support the initial development, implementation, and analysis of tools, techniques, and practices which will aid manufacturing extension organizations in providing services to smaller manufacturers and

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which may also be of direct use by the smaller manufacturers themselves. Specific industry sectors to be addressed and sub-categories of tools, techniques, practices, and analyses may be specified in solicitations. Examples of tools, techniques, and practices include, but are not limited to, manufacturing assessment tools, benchmarking tools, business systems management tools, quality assurance assistance tools, financial management tools, software tools, practices for partnering, techniques for urban or rural firms, and comparative analysis of assessment methods. Projects must be completed within the scope of the effort proposed and should not require on-going federal support.

(c) *Award period.* Projects initiated under this category may be carried out over a period of up to three years. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(d) *Matching requirements.* Matching fund requirements for these proposals will be specified in solicitations including the breakdown of cash and in-kind requirements. For those projects not requiring matching funds, the presence of match will be considered in the evaluation under the Financial Plan criteria.

(e) *Tools, techniques, practices, and analyses projects evaluation criteria.* Proposals from applicants will be evaluated and rated on the basis of the following criteria listed in descending order of importance:

(1) *Demonstration that the proposed project will meet the technical assistance needs of technical assistance providers and manufacturers in the target population.* Target population must be clearly defined. The proposal must demonstrate that it understands the population's tool or technique needs within the proposed project area. The proposal should show that the efforts being proposed meet the needs identified. Factors that may be considered include: A clear definition of the target population, size and demographic distribution; demonstrated understanding

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of the target population's tools or technique needs; and appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

(2) *Development methodology and use of appropriate technology and information sources.* The proposal must describe the technical plan for the development of the tool or resource, including the project activities to be used in the tool/resource development and the sources of technology and/or information which will be used to create the tool or resource. Sources may include those internal to the proposer or from other organizations. Factors that may be considered include: Adequacy of the proposed technical plan; strength of core competency in the proposed area of activity; and demonstrated access to relevant technical or information sources external to the organization.

(3) *Degree of integration with the manufacturing extension partnership.* The proposal must demonstrate that the tool or resource will be integrated into and will be of service to the NIST Manufacturing Extension Centers. Factors that may be considered include: Ability to access the tool or resource especially for MEP extension centers; methodology for disseminating or promoting use of the tool or technique especially within the MEP system; and demonstrated interest in using the tool or technique especially by MEP extension centers.

(4) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are developing or have expertise on similar tools, techniques, practices, or analyses. If no such organizations exist, the proposal should show that this is the case. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant to the proposed project; adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities; and that the proposed activity does not duplicate existing services or resources.

(5) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed tool or technique and for ensuring continuous improvement of the tool. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and “customer satisfaction” measures of performance.

(6) *Management experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; qualifications of the project team and its leadership to conduct the proposed activity; soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; and appropriateness of the organizational approach for carrying out the proposed activity.

(7) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant’s total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that may be considered include: Reasonableness of the budget, both in income and expenses; strength of commitment and amount of the proposer’s cost share, if any; effectiveness of management plans for control of budget; appropriateness of matching contributions; and plan for maintaining the program after the cooperative agreement has expired.

§ 292.4 Information infrastructure projects.

(a) *Eligibility criteria.* In general, eligible applicants for these projects include all for profit and nonprofit organizations including universities, community colleges, state governments, state technology programs and independent nonprofit organizations. However, specific limitations on eligibility may be specified in solicitations. Organizations may submit multiple pro-

posals under this category in each solicitation for unique projects.

(b) *Project objective.* The purpose of these projects is to support and act as a catalyst for the development and implementation of information infrastructure services and pilots. These projects will aid manufacturing extension organizations and smaller manufacturers in accessing the technical information they need or will accelerate the rate of adoption of electronic commerce. Specific industry sectors to be addressed or subcategories of information infrastructure projects include, but are not limited to, pilot demonstration of electronic data interchange in a supplier chain, implementation of an electronic information service for field engineers at MEP extension centers, and industry specific electronic information services for MEP centers and smaller manufacturers.

(c) *Award period.* Projects initiated under this category may be carried out over a period of up to three years. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(d) *Matching requirements.* Matching fund requirements for these proposals will be specified in solicitations including the breakdown of cash and in-kind requirements. For those projects not requiring matching funds, the presence of match will be considered in the evaluation under the Financial Plan criteria.

(e) *Information infrastructure projects evaluation criteria.* Proposals from applicants will be evaluated and rated on the basis of the following criteria listed in descending order of importance:

(1) *Demonstration that the proposed project will meet the need of the target customer base.* The target customer base must be clearly defined and, in general, will be technical assistance providers and/or smaller manufacturers. The proposal should demonstrate a clear understanding of the customer base’s needs within the proposed project area. The proposal should also show that the efforts being proposed meet the needs

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identified. Factors that may be considered include: A clear definition of the customer base, size and demographic distribution; demonstrated understanding of the customer base's needs within the project area; and appropriateness of the size of the customer base and the anticipated impact for the proposed expenditure.

(2) *Development plans and delivery/implementation mechanisms.* The proposal must set forth clearly defined, effective plans for the development, delivery and/or implementation of proposed services to the customer base. The proposal must delineate the sources of information which will be used to implement the project. Sources may include those internal to the center (including staff expertise) or from other organizations. Factors that may be considered include: Adequacy of plans; potential effectiveness and efficiency of proposed delivery and implementation systems; demonstrated capacity to form effective linkages; partnerships necessary for success of the proposed activity; strength of core competency in the proposed area of activity; and demonstrated access to relevant technical or information sources external to the organization.

(3) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are developing or have expertise within the project area. In addition, the project should demonstrate that it does not duplicate efforts which already are being performed by the private sector without government support. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. If the proposer will not be partnering with any other organizations, then the proposal should clearly explain why the project will be more successful if implemented as proposed. A proposal which makes a credible case for why there are no, or very limited, partnerships will not be penalized in evaluation. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant to the proposed project; Adequate linkages and partnerships with relevant existing organi-

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zations; clear definition of the roles of partnering organizations in the proposed activities; and that the proposed activity does not duplicate existing services or resources.

(4) *Management and organizational experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the project. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; qualifications of the project team and its leadership to conduct the proposed activity; soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; and appropriateness of the organizational approach for carrying out the proposed activity.

(5) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and the ability of the project to continue after the cooperative agreement has expired without federal support. While projects that appear to require ongoing public support will be considered, in general, they will be evaluated lower than those which show a strong ability to become self-sufficient. Factors that may be considered include: Reasonableness of the budget, both in income and expenses; strength of commitment and amount of the proposer's cost share, if any; effectiveness of management plans for control of budget; appropriateness of matching contributions; and plan for maintaining the program after the cooperative agreement has expired.

(6) *Evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed project and for ensuring continuous improvement. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

§ 292.5 Proposal selection process.

The proposal evaluation and selection process will consist of three principal phases: Proposal qualifications; proposal review and selection of finalists; and award determination as follows:

(a) *Proposal qualification.* All proposals will be reviewed by NIST to assure compliance with the proposal content and other basic provisions of this part. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

(b) *Proposal review and selection of finalists.* NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this part. Evaluation panels will consist of NIST employees and in some cases other federal employees or non-federal experts who sign non-disclosure agreements. A site visit may be required to make full evaluation of a proposal. From the qualified proposals, a group of finalists will be numerically ranked and recommended for award based on this review.

(c) *Award determination.* The Director of the NIST, or her/his designee, shall select awardees based on total evaluation scores, geographic distribution, and the availability of funds. All three factors will be considered in making an award. Upon the final award decision, a notification will be made to each of the proposing organizations.

§ 292.6 Additional requirements.

Federal policies and procedures. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

PART 295—ADVANCED TECHNOLOGY PROGRAM

Subpart A—General

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AUTHORITY: 15 U.S.C. 278n.

SOURCE: 55 FR 30145, July 24, 1990, unless otherwise noted.

Subpart A—General

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program (ATP) is to assist United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies. These technologies are:

(1) High risk, because the technical challenges make success uncertain;

(2) High pay-off, because when applied they offer significant benefits to the U.S. economy; and

(3) Emerging and enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications.

(b) The rules in this part prescribe policies and procedures for the award of cooperative agreements under the Advanced Technology Program in

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order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, the rules in this part address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.

(c) In carrying out the rules in this part, the Program endeavors to put more emphasis on joint ventures and consortia with a broad range of participants, including large companies, and less emphasis on support of individual large companies.

[62 FR 64684, Dec. 9, 1997]

§ 295.2 Definitions.

(a) For the purposes of the ATP, the term *award* means Federal financial assistance made under a grant or cooperative agreement.

(b) The term *company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), or corporations.

(c) The term *cooperative agreement* refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, or services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(d) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the

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same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the ATP project and associated reasonable fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

(e) The term *foreign-owned company* means a company other than a United States-owned company as defined in § 295.2(q).

(f) The term *grant* means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(g) The term *independent research organization* (IRO) means a nonprofit research and development corporation or association organized under the laws of any state for the purpose of carrying out research and development on behalf of other organizations.

(h) The term *indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting

practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

(i) The term *industry-led joint research and development venture* or *joint venture* means a business arrangement that consists of two or more separately-owned, for-profit companies that perform research and development in the project; control the joint venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The joint venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. A for-profit company or an independent research organization may serve as an Administrator and perform administrative tasks on behalf of a joint venture, such as handling receipts and disbursements of funds and making antitrust filings. The following activities are not permissible for ATP funded joint ventures:

(1) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;

(2) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets; and

(3) Entering into any agreement or engaging in any other conduct:

(i) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or

(ii) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

(j) The term *intellectual property* means an invention patentable under title 35, United States Code, or any patent on such an invention.

(k) The term *large business* for a particular ATP competition means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds required by §295.7(a). In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.

(l) The term *matching funds or cost sharing* means that portion of project costs not borne by the Federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on an ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified at §295.25, the value of in-kind contributions shall be determined in accordance with OMB Circular A-110, Subpart C, Section 23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP program. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. ATP shall determine the allowability of matching share costs in accordance with applicable federal cost principles.

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(m) The term *person* shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(n) The term *Program* means the Advanced Technology Program.

(o) The term *Secretary* means the Secretary of Commerce or the Secretary's designee.

(p) The term *small business* means a business that is independently owned and operated, is organized for profit, and is not dominant in the field of operation in which it is proposing, and meets the other requirements found in 13 CFR part 121.

(q) The term *United States-owned company* means a for-profit organization, including sole proprietors, partnerships, or corporations, that has a majority ownership or control by individuals who are citizens of the United States.

[55 FR 30145, July 24, 1990, as amended at 59 FR 666, 667, Jan. 6, 1994; 62 FR 64684, 64685, Dec. 9, 1997; 63 FR 64413, Nov. 20, 1998]

§ 295.3 Eligibility of United States- and foreign-owned businesses.

(a) A company shall be eligible to receive an award from the Program only if:

(1) The Program finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(2) Either the company is a United States-owned company, or the Program finds that the company is incorporated in the United States and has a parent

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company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Program; affords the United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(b) The Program may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under the Program if the Program determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.

(c) Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a citizen or ownership must be transferred to a U.S. citizen(s).

[59 FR 667, Jan. 6, 1994, as amended at 62 FR 64685, Dec. 9, 1997]

§ 295.4 The selection process.

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. Source evaluation boards (SEB) are established to ensure that all proposals receive careful consideration. In the first step, called "preliminary screening," proposals may be eliminated by the SEB that do not meet the requirements of this Part of the annual FEDERAL REGISTER Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage are that the proposal: is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high-risk R&D; is not industry-led; is significantly overpriced or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to

§ 295.7; or does not meet the cost-sharing requirement. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal.

(b) In the second step, referred to as the “technical and business review,” proposals are evaluated under the criteria found in § 295.6. Proposals judged by the SEB after considering the technical and business evaluations to have the highest merit based on the selection criteria receive further consideration and are referred to as “semifinalists.”

(c) In the third step, referred to as “selection of finalists,” the SEB prepares a final ranking of semifinalist proposals by a majority vote, based on the evaluation criteria in § 295.6. During this step, the semifinalist proposers will be invited to an oral review of their proposals with NIST, and in some cases site visits may be required. Subject to the provisions of § 295.6, a list of ranked finalists is submitted to the Selecting Official.

(d) In the final step, referred to as “selection of recipients,” the Selecting Official selects funding recipients from among the finalists, based upon: the SEB rank order of the proposals on the basis of all selection criteria (§ 295.6); assuring an appropriate distribution of funds among technologies and their applications; the availability of funds; and adherence to the Program selection criteria. The Program reserves the right to deny awards in any case where information is uncovered which raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.

(e) NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. For example, NIST may request that the proposer delete from the scope of work a particular task that is deemed by NIST to be product development or otherwise inappropriate for ATP support.

[63 FR 64413, Nov. 20, 1998]

§ 295.5 Use of pre-proposals in the selection process.

To reduce proposal preparation costs incurred by proposers and to make the selection process more efficient, NIST may use mandatory or optional preliminary qualification processes based on pre-proposals. In such cases, announcements requesting pre-proposals will be published as indicated in § 295.7, and will seek abbreviated proposals (pre-proposals) that address both of the selection criteria, but in considerably less detail than full proposals. The Program will review the pre-proposals in accordance with the selection criteria and provide written feedback to the proposers to determine whether the proposed projects appear sufficiently promising to warrant further development into full proposals. Proposals are neither “accepted” or “rejected” at the pre-proposal stage. When the full proposals are received in response to the notice of availability of funds described in § 295.7, the review and selection process will occur as described in § 295.4.

[63 FR 64414, Nov. 20, 1998]

§ 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are listed in this section. No proposal will be funded unless the Program determines that it has scientific and technological merit and that the proposed technology has strong potential for broad-based economic benefits to the nation. Additionally, no proposal will be funded that does not require Federal support, that is product development rather than high risk R&D, that does not display an appropriate level of commitment from the proposer, or does not have an adequate technical and commercialization plan.

(a) *Scientific and technological merit (50%).* The proposed technology must be highly innovative. The research must be challenging, with high technical risk. It must be aimed at overcoming an important problem(s) or exploiting a promising opportunity. The technical leverage of the technology must be adequately explained. The research must have a strong potential for

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advancing the state of the art and contributing significantly to the U.S. scientific and technical knowledge base. The technical plan must be clear and concise, and must clearly identify the core innovation, the technical approach, major technical hurdles, the attendant risks, and clearly establish feasibility through adequately detailed plans linked to major technical barriers. The plan must address the questions of “what, how, where, when, why, and by whom” in substantial detail. The Program will assess the proposing team’s relevant experience for pursuing the technical plan. The team carrying out the work must demonstrate a high level of scientific/technical expertise to conduct the R&D and have access to the necessary research facilities.

(b) *Potential for broad-based economic benefits (50%)*. The proposed technology must have a strong potential to generate substantial benefits to the nation that extend significantly beyond the direct returns to the proposing organization(s). The proposal must explain why ATP support is needed and what difference ATP funding is expected to make in terms of what will be accomplished with the ATP funding versus without it. The pathways to economic benefit must be described, including the proposer’s plan for getting the technology into commercial use, as well as additional routes that might be taken to achieve broader diffusion of the technology. The proposal should identify the expected returns that the proposer expects to gain, as well as returns that are expected to accrue to others, *i.e.*, spillover effects. The Program will assess the proposer’s relevant experience and level of commitment to the project and project’s organizational structure and management plan, including the extent to which participation by small businesses is encouraged and is a key component in a joint venture proposal, and for large company single proposers, the extent to which subcontractor/subrecipient teaming arrangements are featured and are a key component of the proposal.

[63 FR 64414, Nov. 20, 1998]

§ 295.7 Notice of availability of funds.

The Program shall publish at least annually a FEDERAL REGISTER notice

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inviting interested parties to submit proposals, and may more frequently publish invitations for proposals in the Commerce Business Daily, based upon the annual notice. Proposals must be submitted in accordance with the guidelines in the ATP Proposal Preparation Kit as identified in the published notice. Proposals will only be considered for funding when submitted in response to an invitation published in the FEDERAL REGISTER, or a related announcement in the Commerce Business Daily.

[63 FR 64414, Nov. 20, 1998]

§ 295.8 Intellectual property rights; publication of research results.

(a)(1) *Patent rights*. Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. Joint ventures shall provide to NIST a copy of their written agreement which defines the disposition of ownership rights among the members of the joint venture, and their contractors and subcontractors as appropriate, that complies with the first sentence of this paragraph. The United States will reserve a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(2) *Patent procedures*. Each award by the Program shall include provisions assuring the retention of a governmental use license in each disclosed invention, and the government’s retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by the funding Recipient to the Program, including the

subject inventions of members of the joint venture (if applicable) in which the funding Recipient is a participant, contractors and subcontractors of the funding Recipient. The funding Recipient shall disclose such subject inventions to the Program within two months after the inventor discloses it in writing to the Recipient's designated representative responsible for patent matters. The disclosure shall consist of a detailed, written report which provides the Program with the following: the title of the present invention; the names of all inventors; the name and address of the assignee (if any); an acknowledgment that the United States has rights in the subject invention; the filing date of the present invention, or, in the alternative, a statement identifying that the Recipient determined that filing was not feasible; an abstract of the disclosure; a description or summary of the present invention; the background of the present invention or the prior art; a description of the preferred embodiments; and what matter is claimed. Upon issuance of the patent, the funding Recipient or Recipients must notify the Program accordingly, providing it with the Serial Number of the patent as issued, the date of issuance, a copy of the disclosure as issued, and if appropriate, the name, address, and telephone number(s) of an assignee.

(b) *Copyrights*: Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. The funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, perform publicly and display publicly, and for data other than computer software

to distribute to the public by or on behalf of the Government.

(c) *Publication of research results*: The decision on whether or not to publish research results will be made by the funding recipient(s). Unpublished intellectual property owned and developed by any business or joint research and development venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under §295.8(b) shall not be considered a waiver of this requirement.

[55 FR 30145, July 24, 1990. Redesignated and amended at 59 FR 667, 669, Jan. 6, 1994; 63 FR 64414, Nov. 20, 1998]

§ 295.9 Protection of confidential information.

As required by section 278n(d)(5) of title 15 of the United States Code, the following information obtained by the Secretary on a confidential basis in connection with the activities of any business or joint research and development venture receiving funding under the program shall be exempt from disclosure under the Freedom of Information Act—

(1) Information on the business operation of any member of the business or joint venture;

(2) Trade secrets possessed by any business or any member of the joint venture.

[55 FR 30145, July 24, 1990. Redesignated at 59 FR 667, Jan. 6, 1994]

§ 295.10 Special reporting and auditing requirements.

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor "best effort" progress toward overall project goals. The purpose of the business reporting system is to monitor project performance against the Program's mission as required by

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the Government Performance and Results Act (GPRA) mandate for program evaluation. The audit standards to be applied to ATP awards are the "Government Auditing Standards" (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specified audit guidelines. The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce's Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

[62 FR 64686, Dec. 9, 1997. Redesignated at 63 FR 64415, Nov. 20, 1998]

§ 295.11 Technical and educational services for ATP recipients.

(a) Under the Federal Technology Transfer Act of 1986, the National Institute of Standards and Technology of the Technology Administration has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, the National Institute of Standards and Technology has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.

(b) In no event will the National Institute of Standards and Technology enter into a cooperative research and development agreement with a recipient of awards under the Program which provides for the payment of Program funds from the award recipient to the National Institute of Standards and Technology.

(c) From time to time, ATP may conduct public workshops and undertake

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other educational activities to foster the collaboration of funding Recipients with other funding resources for purposes of further development and commercialization of ATP-related technologies. In no event will ATP provide recommendations, endorsements, or approvals of any ATP funding Recipients to any outside party.

[55 FR 30145, July 24, 1990. Redesignated at 59 FR 667, Jan. 6, 1994. Redesignated and amended at 63 FR 64415, Nov. 20, 1998]

Subpart B—Assistance to United States Industry-Led Joint Research and Development Ventures

§ 295.20 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(1). Such assistance includes but is not limited to:

(a) Partial start-up funding for joint research and development ventures.

(b) A minority share of the cost of joint research and development ventures for up to five years.

(c) Equipment, facilities and personnel for joint research and development ventures.

§ 295.21 Qualifications of proposers.

Subject to the limitations set out in § 295.3, assistance under this subpart is available only to industry-led joint research and development ventures. These ventures may include universities, independent research organizations, and governmental entities. Proposals for funding under this Subpart may be submitted on behalf of a joint venture by a for-profit company or an independent research organization that is a member of the joint venture. Proposals should include letters of commitment or excerpts of such letters from all proposed members of the joint venture, verifying the availability of cost-sharing funds, and authorizing the party submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal. No costs shall be incurred under an ATP project by the joint venture members until such time as a

joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

[63 FR 64415, Nov. 20, 1998]

§ 295.22 Limitations on assistance.

(a) An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

[62 FR 64687, Dec. 9, 1997]

§ 295.23 Dissolution of joint research and development ventures.

Upon dissolution of any joint research and development venture receiving funds under these procedures or at a time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

§ 295.24 Registration.

Joint ventures selected for funding under the Program must notify the Department of Justice and the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

[63 FR 64415, Nov. 20, 1998]

§ 295.25 Special rule for the valuation of transfers between separately-owned joint venture members.

(a) *Applicability.* This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from

one joint venture member to other separately-owned joint venture members.

(b) *Rule.* The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.

(c) *Definition.* The term “best customer price” shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

[62 FR 64687, Dec. 9, 1997]

Subpart C—Assistance to Single-Proposer U.S. Businesses

§ 295.30 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses.

[59 FR 670, Jan. 6, 1994]

§ 295.31 Qualification of proposers.

Awards under this subpart will be available to all businesses, subject to the limitations set out in §§ 295.3 and 295.32.

[62 FR 64687, Dec. 9, 1997]

§ 295.32 Limitations on assistance.

(a) The Program will not directly provide funding under this subpart to any governmental entity, academic institution or independent research organization.

(b) For proposals submitted to ATP after December 31, 1997, awards to large businesses made under this subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.

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(c) Awards under this subpart may not exceed \$2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management

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fees shall be available for awards made under this subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

[62 FR 64687, Dec. 9, 1997]

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