Subtitle B—Regulations Relating to Commerce and Foreign Trade

CHAPTER I—BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE

PART 30—FOREIGN TRADE REGULATIONS

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AUTHORITY: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization plan No. 5 of 1990 (3 CFR 1949–1953 Comp., p.1004); Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended and No. 35–2B, December 20, 1996, as amended; Public Law 107–228, 116 Stat. 1350.

SOURCE: 73 FR 31555, June 2, 2008, unless otherwise noted.

Subpart A—General Requirements

§ 30.1 Purpose and definitions.

(a) This part sets forth the Foreign Trade Regulations (FTR) as required under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, section 301. These regulations are revised pursuant to provisions of the Foreign Relations Authorization Act, Public Law 107–228 (the Act). This Act authorizes the Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Homeland Security, to publish regulations mandating that all persons who are required to file export information under Chapter 9 of 13 U.S.C., file such information through the Automated Export System (AES) for all shipments where a Shipper's Export Declaration (SED) was previously required. The law further authorizes the Secretary of Commerce to issue regulations regarding imposition of civil and criminal penalties for violations of the provisions of the Act and these regulations.

(b) Electronic filing through the AES strengthens the U.S. government's ability to prevent the export of certain items to unauthorized destinations and/or end users because the AES aids in targeting, identifying, and when necessary confiscating suspicious or illegal shipments prior to exportation.

(c) Definitions used in the FTR. As used in this part, the following definitions apply:

AES applicant. The USPPI or authorized agent who reports export information electronically to the AES, or through AES*Direct*.

AESDirect. An Internet portal within the Automated Commercial Environment that allows USPPIs and authorized agents to transmit EEI to the AES. All regulatory requirements pertaining to the AES also apply to AES*Direct*.

AES downtime filing citation. A statement used in place of a proof of filing citation when the AES or AES*Direct* are inoperable.

Air waybill. The shipping document used for the transportation of air freight includes conditions, limitations of liability, shipping instructions, description of commodity, and applicable transportation charges. It is generally similar to a straight non-negotiable bill of lading and is used for similar purposes.

Annotation. An explanatory note (e.g., proof of filing citation, postdeparture filing citation, AES downtime filing citation, exemption or exclusion legend) on the bill of lading, air waybill, export shipping instructions, other commercial loading documents or electronic equivalent.

Authorized agent. An individual or legal entity physically located in or otherwise under the jurisdiction of the United States that has obtained power of attorney or written authorization from a USPPI or FPPI to act on its behalf, and for purposes of this part, to complete and file the EEI.

Automated Broker Interface (ABI). A CBP system through which an importer or licensed customs broker can electronically file entry and entry summary data on goods imported into the United States.

Automated Commercial Environment (ACE). A CBP authorized electronic data interchange system for processing import and export data.

Automated Export System (AES). The system for collecting EEI (or any successor to the Shipper's Export Declaration) from persons exporting goods from the United States, Puerto Rico, or the U.S. Virgin Islands; between Puerto Rico and the United States; and to the U.S. Virgin Islands from the United States or Puerto Rico. The AES is currently accessed through the Automated Commercial Environment.

Automated Export System Trade Interface Requirements (AESTIR). The document that describes the technical and operational requirements of the AES. The AESTIR presents record formats and other reference information used in the AES.

Bill of Lading (BL). A document that establishes the terms of a contract under which freight is to be moved between specified points for a specified charge. It is issued by the carrier based on instructions provided by the shipper or its authorized agent. It may serve as a document of title, a contract of carriage, and a receipt for goods.

Bond. An instrument used by CBP as security to ensure the payment of duties, taxes and fees and/or compliance

with certain requirements such as the submission of manifest information.

Bonded warehouse. An approved private warehouse used for the storage of goods until duties or taxes are paid and the goods are properly released by CBP. Bonds must be posted by the warehouse proprietor and by the importer to indemnify the government if the goods are released improperly.

Booking. A reservation made with a carrier for a shipment of goods on a specific voyage, flight, truck or train.

Bureau of Industry and Security (BIS). This bureau within the U.S. Department of Commerce is concerned with the advancement of U.S. national security, foreign policy, and economic interests. The BIS is responsible for regulating the export of sensitive goods and technologies; enforcing export control, antiboycott, and public safety laws; cooperating with and assisting other countries on export control and strategic trade issues; and assisting U.S. industry to comply with international arms control agreements.

Buyer. The principal in the export transaction that purchases the commodities for delivery to the ultimate consignee. The buyer and ultimate consignee may be the same.

Cargo. Goods being transported.

Carnet. An international customs document that allows the carnet holder to import into the United States or export to foreign countries certain goods on a temporary basis without the payment of duties.

Carrier. An individual or legal entity in the business of transporting passengers or goods. Airlines, trucking companies, railroad companies, shipping lines, pipeline companies, slot charterers, and Non-Vessel Operating Common Carriers (NVOCCs) are all examples of carriers.

Civil penalty. A monetary penalty imposed on a USPPI, authorized agent, FPPI, carrier, or other party to the transaction for violating the FTR, including failing to file export information, filing false or misleading information, filing information late, and/or using the AES to further any illegal activity, and/or violating any other regulations of this part.

Commerce Control List (CCL). A list of items found in Supplement No. 1 to Part 774 of the EAR. Supplement No. 2 to Part 774 of the EAR contains the General Technology and Software Notes relevant to entries contained in the CCL.

Commercial loading document. A document that establishes the terms of a contract between a shipper and a transportation company under which freight is to be moved between points for a specific charge. It is usually prepared by the shipper, the shipper's agent or the carrier and serves as a contract of carriage. Examples of commercial loading documents include the air waybill, ocean bill of lading, truck bill, rail bill of lading, and U.S. Postal Service customs declaration form.

Compliance alert. An electronic response sent to the filer by the AES when the shipment was not reported in accordance with this part (e.g., late filing). The filer is required to review their filing practices and take steps to conform with export reporting requirements.

Consignee. The person or entity named in a freight contract, a contract of carriage that designates to whom goods have been consigned, and that has the legal right to claim the goods at the destination.

Consignment. Delivery of goods from a USPPI (the consignor) to an agent (consignee) under agreement that the agent sells the goods for the account of the USPPI.

Container. The term container shall mean an article of transport equipment (lift-van, movable tank or other similar structure):

(i) Fully or partially enclosed to constitute a compartment intended for containing goods;

(ii) Of a permanent character and accordingly strong enough to be suitable for repeated use;

(iii) Specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;

(iv) Designed for ready handling, particularly when being transferred from one mode of transport to another;

(v) Designed to be easy to fill and to empty; and

(vi) Having an internal volume of one cubic meter or more; the term ''container'' shall include the accessories

and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. The term ''container'' shall not include vehicles, accessories or spare parts of vehicles, or packaging. Demountable bodies are to be treated as containers.

Controlling agency. The agency responsible for the license determination on specified goods exported from the United States.

Cost of goods sold. Cost of goods is the sum of expenses incurred in the USPPI acquisition or production of the goods.

Country of origin. The country where the goods were mined, grown, or manufactured or where each foreign material used or incorporated in a good underwent a change in tariff classification indicating a substantial transformation under the applicable rule of origin for the good. The country of origin for U.S. imports are reported in terms of the International Standards Organization (ISO) codes designated in the Schedule C, Classification of Country and Territory Designations.

Country of ultimate destination. The country where the goods are to be consumed, further processed, stored, or manufactured, as known to the USPPI at the time of export. (See §30.6(a)(5).

Criminal penalty. For the purpose of this part, a penalty imposed for knowingly or willfully violating the FTR, including failing to file export information, filing false or misleading information, filing information late, and/or using the AES to further illegal activity. The criminal penalty includes fines, imprisonment, and/or forfeiture.

Customs broker. An individual or entity licensed to enter and clear imported goods through CBP for another individual or entity.

Destination. The foreign location to which a shipment is consigned.

Diplomatic pouch. Any properly identified and sealed pouch, package, envelope, bag, or other container that is used to transport official correspondence, documents, and articles intended for official use, between embassies, legations, or consulates, and the foreign office of any government.

Distributor. An agent who sells directly for a supplier and maintains an inventory of the supplier's products.

Domestic goods. Goods that are grown, produced, or manufactured in the United States, or previously imported goods that have undergone substantial transformation in the United States, including changes made in a U.S. FTZ, from the form in which they were imported, or that have been substantially enhanced in value or improved in condition by further processing or manufacturing in the United States.

Drayage. The charge made for hauling freight, carts, drays, or trucks.

Dun & Bradstreet Number (DUNS). The DUNS Number is a unique 9-digit identification sequence that provides identifiers to single business entities while linking corporate family structures together.

Dunnage. Materials placed around cargo to prevent shifting or damage while in transit.

Duty. A charge imposed on the import of goods. Duties are generally based on the value of the goods (ad valorem duties), some other factor, such as weight or quantity (specific duties), or a combination of value and other factors (compound duties).

Electronic CBP Form 214 Admissions (e214). An automated CBP mechanism that allows importers, brokers, and zone operators to report FTZ admission information electronically via the CBP's Automated Broker Interface. The e214 is the electronic mechanism that replaced the Census Bureau's Automated Foreign Trade Zone Reporting Program (AFTZRP).

Electronic Export Information (EEI). The electronic export data as filed in the AES. This is the electronic equivalent of the export data formerly collected on the Shipper's Export Declaration (SED) and now mandated to be filed through the AES or AES*Direct*.

Employer identification number (EIN). The USPPI's Internal Revenue Service (IRS) EIN is the 9-digit numerical code as reported on the Employer's Quarterly Federal Tax Return, Treasury Form 941.

End user. The person abroad that receives and ultimately uses the exported or reexported items. The end user is not an authorized agent or intermediary, but may be the FPPI or ultimate consignee.

Enhancement. A change or modification to goods that increases their value or improves their condition.

Entry number. Consists of a three-position entry filer code and a seven-position transaction code, plus a check digit assigned by the entry filer as a tracking number for goods entered into the United States.

Equipment number. The identification number for shipping equipment, such as container or igloo (Unit Load Device (ULD)) number, truck license number, or rail car number.

Exclusions. Transactions outside of the scope of the FTR that are excluded from the requirement of filing EEI.

Exemption. A specific reason as cited within this part that eliminates the requirement for filing EEI.

Exemption legend. A notation placed on the bill of lading, air waybill, export shipping instructions, or other commercial loading document that describes the basis for not filing EEI for an export transaction. The exemption legend shall reference the number of the section or provision in the FTR where the particular exemption is provided (See appendix B to this part).

Export. To send or transport goods out of a country.

Export Administration Regulations (EAR). Regulations administered by the BIS that, among other things, provide specific instructions on the use and types of export licenses required for certain commodities, software, and technology. These regulations are located in 15 CFR parts 730 through 774.

Export control. Governmental control of exports for statistical or strategic and short supply or national security purposes, and/or for foreign policy purposes.

Export Control Classification Number (ECCN). The number used to identify items on the CCL, Supplement No. 1 to Part 774 of the EAR. The ECCN consists of a set of digits and a letter. Items that are not classified under an ECCN are designated ''EAR99.'' Section 738.2 of the EAR describes the ECCN format.

Export license. A controlling agency's document authorizing export of particular goods in specific quantities or values to a particular destination. Issuing agencies include, but are not limited to, the U.S. State Department; the BIS; the Bureau of Alcohol, Tobacco, and Firearms; and the Drug Enforcement Administration permit to export.

Export statistics. The measure of quantity and value of goods (except for shipments to U.S. military forces overseas) moving out of the United States to foreign countries, whether such goods are exported from within the Customs territory of the United States, a CBP bonded warehouse, or a U.S. Foreign Trade Zone (FTZ).

Fatal error message. An electronic response sent to the filer by the AES when invalid or missing data has been encountered, the EEI has been rejected, and the information is not on file in the AES.

Filer. The USPPI or authorized agent (of either the USPPI or FPPI) who has been approved to file EEI.

Filer ID. The Employer Identification Number or Dun & Bradstreet Number of the company or individual filing the export information in the Automated Export System.

Filing electronic export information. The act of entering the EEI in the AES.

Foreign entity. A person that temporarily enters into the United States and purchases or obtains goods for export. This person does not physically maintain an office or residence in the United States. This is a special class of USPPI.

Foreign goods. Goods that were originally grown, produced, or manufactured in a foreign country, then subsequently entered into the United States, admitted to a U.S. FTZ, or entered into a CBP bonded warehouse, but not substantially transformed in form or condition by further processing or manufacturing in the United States, U.S. FTZs, Puerto Rico, or the U.S. Virgin Islands.

Foreign port of unlading. The port in a foreign country where the goods are removed from the exporting carrier. The foreign port does not have to be located in the country of destination. The foreign port of unlading shall be reported in terms of the Schedule K, ''Classification of CBP Foreign Ports by Geographic Trade Area and Country.''

Foreign Principal Party in Interest (FPPI). The party abroad who purchases the goods for export or to whom final delivery or end-use of the goods will be made. This party may be the Ultimate Consignee.

Foreign Trade Zone (FTZ). Specially licensed commercial and industrial areas in or near ports of entry where foreign and domestic goods, including raw materials, components, and finished goods, may be brought in without being subject to payment of customs duties. Goods brought into these zones may be stored, sold, exhibited, repacked, assembled, sorted, graded, cleaned, manufactured, or otherwise manipulated prior to reexport or entry into the country's customs territory.

Forwarding agent. The person in the United States who is authorized by the principal party in interest to facilitate the movement of the cargo from the United States to the foreign destination and/or prepare and file the required documentation.

Goods. Merchandise, supplies, raw materials, and products or any other item identified by a Harmonized Tariff System (HTS) code.

Harmonized system. A method of classifying goods for international trade developed by the Customs Cooperation Council (now the World Customs Organization).

Harmonized Tariff Schedule of the United States Annotated (HTSUSA). An organized listing of goods and their duty rates, developed by the U.S. International Trade Commission, as the basis for classifying imported products.

Household goods. Usual and reasonable kinds and quantities of personal property necessary and appropriate for use by the USPPI in the USPPI's dwelling in a foreign country that are shipped under a bill of lading or an air waybill and are not intended for sale.

Imports. All goods physically brought into the United States, including:

(1) Goods of foreign origin, and

(2) Goods of domestic origin returned to the United States without substantial transformation affecting a change in tariff classification under an applicable rule of origin.

Inbond. A procedure administered by CBP under which goods are transported or warehoused under CBP supervision until the goods are either formally entered into the customs territory of the United States and duties are paid, or until they are exported from the United States. The procedure is so named because the cargo moves under a bond (financial liability assured by the principal on the bond) from the gateway seaport, airport, or land border port and remains ''inbond'' until CBP releases the cargo at the inland Customs point or at the port of export.

Inland freight. The cost to ship goods between points inland and the seaport, airport, or land border port of exportation, other than baggage, express mail, or regular mail.

Intermediate consignee. The person or entity in the foreign country who acts as an agent for the principal party in interest with the purpose of effecting delivery of items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

Internal Transaction Number (ITN). The AES generated number assigned to a shipment confirming that an EEI transaction was accepted and is on file in the AES.

International Standards Organization (ISO) Country Codes. The 2-position alphabetic ISO code for countries used to identify countries for which shipments are reportable.

International Traffic in Arms Regulations (ITAR). Regulations administered by the Directorate of Defense Trade Controls within the U.S. State Department that provide for the control of the export and temporary import of defense articles and defense services. These regulations are located in 22 CFR 120–130.

International waters. Waters located outside the U.S. territorial sea, which extends 12 nautical miles measured from the baselines of the United States, and outside the territory of any foreign country, including the territorial waters thereof. Note that vessels, platforms, buoys, undersea systems, and other similar structures that are located in international waters, but are attached permanently or temporarily to a country's continental shelf, are considered to be within the territory of that country.

Interplant correspondence. Records or documents from a U.S. firm to its subsidiary or affiliate, whether in the United States or overseas.

In-transit. Goods shipped through the United States, Puerto Rico, or the U.S. Virgin Islands from one foreign country or area to another foreign country or area without entering the consumption channels of the United States.

Issued banknote. A promissory note intended to circulate as money, usually printed on paper or plastic, issued by a bank with a specific denomination, payable to an individual, entity or the bearer.

Kimberley Process Certificate (KPC). A forgery resistant document used to certify the origin of rough diamonds from sources which are free of conflict.

License applicant. The person who applies for an export or reexport license. (For example, obtaining a license for commodities, software, or technology that are listed on the CCL.)

License exception. An authorization that allows a USPPI or other appropriate party to export or reexport under stated conditions, items subject to the EAR that would otherwise require a license under the EAR. The BIS License Exceptions are currently contained in Part 740 of the EAR (15 CFR part 740).

Manifest. A collection of documents, including forms, such as the cargo declaration and annotated bills of lading, that lists and describes the cargo contents of a carrier, container, or warehouse. Carriers required to file manifests with CBP Port Director must include an AES filing citation, or exemption or exclusion legend for all cargo being transported.

Mass-market software. Software that is produced in large numbers and made available to the public. It does not include software that is customized for a specific user.

Merchandise. Goods, wares, and chattels of every description, and includes merchandise the exportation of which is prohibited, and monetary instruments as defined in 31 U.S.C. 5312.

Method of transportation. The method by which goods are exported from the United States by way of seaports, airports, or land border crossing points. Methods of transportation include vessel, air, truck, rail, mail or other. Method of transportation is synonymous with mode of transportation.

North American Free Trade Agreement (NAFTA). The formal agreement, or treaty, among Canada, Mexico, and the United States to promote trade amongst the three countries. It includes measures for the elimination of tariffs and nontariff barriers to trade, as well as numerous specific provisions concerning the conduct of trade and investment.

Office of Foreign Assets Control (OFAC). An agency within the U.S. Department of the Treasury that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. The OFAC acts under Presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction.

Order party. The person in the United States that conducts the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, receives the order from the FPPI. If a U.S. order party directly arranges for the sale and export of goods to the FPPI, the U.S. order party shall be listed as the USPPI in the EEI.

Packing list. A list showing the number and kinds of items being shipped, as well as other information needed for transportation purposes.

Partnership agencies. U.S. government agencies that have statistical and analytical reporting and/or monitoring and enforcement responsibilities related to AES postdeparture filing privileges.

Party ID type. Identifies whether the Party ID is an EIN, DUNS, or Foreign Entity reported to the AES, for example, E = EIN, D = DUNS, T = Foreign Entity.

Person. Any natural person, corporation partnership or other legal entity of any kind, domestic or foreign.

Port of export. The port of export is the U.S. Customs and Border Protection (CBP) seaport or airport where the goods are loaded on the aircraft or vessel that is taking the goods out of the United States, or the CBP port where exports by overland transportation cross the U.S. border into Canada or Mexico. For EEI reporting purposes only, for goods loaded aboard an aircraft or vessel that stops at several ports before clearing to the foreign country, the port of export is the first CBP port where the goods were loaded. For goods off-loaded from the original conveyance to another conveyance (even if the aircraft or vessel belongs to the same carrier) at any of the ports, the port where the goods were loaded on the last conveyance before going foreign is the port of export. The port of export is reported in terms of Schedule D, ''Classification of CBP Districts and Ports.'' Use port code 8000 for shipments by mail.

Postdeparture filing. The privilege granted to approved USPPIs for their EEI to be filed up to five (5) calendar days after the date of export.

Postdeparture filing citation. A notation placed on the bill of lading, air waybill, export shipping instructions, or other commercial loading documents that states that the EEI will be filed after departure of the carrier. (See appendix B of this part.)

Power of attorney. A legal authorization, in writing, from a USPPI or FPPI stating that an agent has authority to act as the principal party's true and lawful agent for purposes of preparing and filing the EEI in accordance with the laws and regulations of the United States. (See Appendix A of this part.)

Primary benefit. Receiving the majority payment or exchange of item of value or other legal consideration resulting from an export trade transaction; usually monetary.

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

Proof of filing citation. A notation on the bill of lading, air waybill, export shipping instructions, other commercial loading document or electronic equivalent, usually for carrier use, that provides evidence that the EEI has been filed and accepted in the AES.

Related party transaction. A transaction involving trade between a USPPI and an ultimate consignee where either party owns directly or indirectly 10 percent or more of the other party.

Remission. The cancellation or release from a penalty, including fines, and/or forfeiture, under this part.

Retention. The necessary act of keeping all documentation pertaining to an export transaction for a period of at least five years for an EEI filing, or a time frame designated by the controlling agency for licensed shipments, whichever is longer.

Routed export transaction. A transaction in which the FPPI authorizes a U.S. agent to facilitate export of items from the United States on its behalf and prepare and file the EEI.

Schedule B. The Statistical Classification of Domestic and Foreign Commodities Exported from the United States. These 10-digit commodity classification numbers are administered by the Census Bureau and cover everything from live animals and food products to computers and airplanes. It should also be noted that all import and export codes used by the United States are based on the Harmonized Tariff System.

Schedule C. The Classification of Country and Territory Designations. The Schedule C provides a list of country of origin codes. The country of origin is reported in terms of the International Standards Organization codes.

Schedule D. The Classification of CBP districts and ports. The Schedule D provides a list of CBP districts and ports and the corresponding numeric codes used in compiling U.S. foreign trade statistics.

Schedule K. The Classification of Foreign Ports by Geographic Trade Area and Country. The Schedule K lists the major seaports of the world that directly handle waterborne shipments in the foreign trade of the United States, and includes numeric codes to identify

these ports. This schedule is maintained by the U.S. Army Corps of Engineers.

Seller. A principal in the transaction, usually the manufacturer, producer, wholesaler, or distributor of the goods, that receives the monetary benefit or other consideration for the exported goods.

Service center. A company, entity, or organization that has been certified and approved to facilitate the transmission of EEI to the AES.

Shipment. All goods being sent from one USPPI to one consignee located in a single country of destination on a single conveyance and on the same day. Except as noted in § 30.2(a)(1)(iv), the EEI shall be filed when the value of the goods is over $2,500 per Schedule B or HTSUSA commodity classification code.

Shipment Reference Number (SRN). A unique identification number assigned to the shipment by the filer for reference purposes. The reuse of the SRN is prohibited.

Shipper's Export Declaration (SED). The Department of Commerce paper form used under the Foreign Trade Statistics Regulations to collect information from an entity exporting from the United States. This form was used for compiling the official U.S. export statistics for the United States and for export control purposes. The SED became obsolete on October 1, 2008, with the implementation of the Foreign Trade Regulations (FTR) and has been superseded by the EEI filed in the AES or through the AES*Direct*.

Shipping documents. Documents that include but are not limited to commercial invoices, export shipping instructions, packing lists, bill of ladings and air waybills.

Shipping weight. The total weight of a shipment in kilograms including goods and packaging.

Split shipment. A shipment covered by a single EEI record booked for export on one conveyance, that is divided by the exporting carrier prior to export where the cargo is sent on two or more of the same conveyances of the same carrier leaving from the same port of export within 24 hours by vessel or 7 days by air, truck or rail.

Subzone. A special purpose foreign trade zone established as part of a foreign trade zone project with a limited purpose that cannot be accommodated within an existing zone. Subzones are often established to serve the needs of a specific company and may be located within an existing facility of the company.

Tariff schedule. A comprehensive list or schedule of goods with applicable duty rates to be paid or charged for each listed article as it enters or leaves a country.

Transmitting electronic export information. The act of sending the completed EEI to the AES.

Transportation Reference Number (TRN). A reservation number assigned by the carrier to hold space on the carrier for cargo being shipped. It is the booking number for vessel shipments, the master air waybill number for air shipments, the bill of lading number for rail shipments, and the freight or pro bill for truck shipments.

Transshipment. The transfer of merchandise from the country or countries of origin through an intermediary country or countries to the country of ultimate destination.

Ultimate consignee. The person, party, or designee that is located abroad and actually receives the export shipment. This party may be the end user or the FPPI.

United States Munitions List (USML). Articles and services designated for defense purposes under the ITAR and specified in 22 CFR 121.

Unlading. The physical removal of cargo from an aircraft, truck, rail, or vessel.

U.S. Customs and Border Protection (CBP). The border agency within the Department of Homeland Security (DHS) charged with the management, control, and protection of our Nation's borders at and between the official ports of entry of the United States.

U.S. Immigration and Customs Enforcement (ICE). An agency within the DHS that is responsible for enforcing customs, immigration and related laws and investigating violations of laws to secure the Nation's borders.

U.S. Postal Service customs declaration form. The shipping document, or its electronic equivalent, that a mailer

prepares to declare the contents for the purposes of domestic and foreign customs authorizations and other relevant government agencies. For more information, please see *Mailing Standards of the United States Postal Service, International Mail Manual*, section 123.

U.S. principal party in interest (USPPI). The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export.

Value. The selling price (or the cost if the goods are not sold) in U.S. dollars, plus inland or domestic freight, insurance, and other charges to the U.S. seaport, airport, or land border port of export. Cost of goods is the sum of expenses incurred in the USPPI's acquisition or production of the goods. (See § 30.6(a)(17)).

Vehicle Identification Number (VIN). A number issued by the manufacturer and used for the identification of a self-propelled vehicle.

Verify message. An electronic response sent to the filer by the AES when an unlikely condition is found.

Violation of the FTR. Failure of the USPPI, FPPI, authorized agent of the USPPI, FPPI, carrier, or other party to the transaction to comply with the requirements set forth in 15 CFR 30, for each export shipment.

Voided Kimberley Process Certificate. A Kimberley Process Certificate intended to be used for the exportation of rough diamonds from the United States that has been cancelled for reasons such as loss or error.

Voluntary Self-Disclosure (VSD). A narrative account with supporting documentation that sufficiently describes suspected violations of the FTR. A VSD reflects due diligence in detecting, and correcting potential violation(s) when required information was not reported or when incorrect information was provided that violates the FTR.

Warning message. An electronic response sent to the filer by the AES when certain incomplete and conflicting data reporting conditions are encountered.

Wholesaler/distributor. An agent who sells directly for a supplier and maintains an inventory of the supplier's products.

Written authorization. An authorization, in writing, by the USPPI or FPPI stating that the agent has authority to act as the USPPI's or FPPI's true and lawful agent for purposes of preparing and filing the EEI in accordance with the laws and regulations of the United States. (See Appendix A of this part.)

Zone admission number. A unique and sequential number assigned by a FTZ operator or user for shipments admitted to a zone.

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§ 30.2 General requirements for filing Electronic Export Information (EEI).

(a) *Filing requirements*. (1) The EEI shall be filed through the AES by the United States Principal Party In Interest (USPPI), the USPPI's authorized agent, or the authorized U.S. agent of the Foreign Principal Party In Interest (FPPI) for all exports of physical goods, including shipments moving pursuant to orders received over the Internet. The Automated Export System (AES) is the electronic system for collecting Shipper's Export Declaration (SED) (or any successor document) information from persons exporting goods from the United States, Puerto Rico, Foreign Trade Zones (FTZs) located in the United States or Puerto Rico, the U.S. Virgin Islands, between Puerto Rico and the United States, and to the U.S. Virgin Islands from the United States or Puerto Rico. Exceptions, exclusions, and exemptions to this requirement are provided for in paragraph (d) of this section and Subpart D of this part. References to the AES also shall apply to AES*Direct* unless otherwise specified. For purposes of the regulations in this part, the SED information shall be referred to as EEI. Filing through the AES shall be done in accordance with the definitions, specifications, and requirements of the regulations in this part for all export

shipments, except as specifically excluded in §30.2(d) or exempted in Subpart D of this part, when shipped as follows:

(i) To foreign countries or areas, including free (foreign trade) zones located therein (see §30.36 for exemptions for shipments from the United States to Canada) from any of the following:

(A) The United States, including the 50 states and the District of Columbia.

(B) Puerto Rico.

(C) FTZs located in the United States or Puerto Rico.

(D) The U.S. Virgin Islands.

(ii) Between any of the following nonforeign areas including goods previously admitted to customs warehouses or FTZs and moving under a U.S. Customs and Border Protection (CBP) bond:

(A) To Puerto Rico from the United States.

(B) To the United States from Puerto Rico.

(C) To the U.S. Virgin Islands from the United States or Puerto Rico.

(iii) The EEI shall be filed for goods moving as described in paragraphs (a)(1)(i) and (ii) of this section by any mode of transportation. (Instructions for filing EEI for vessels, aircraft, railway cars, and other carriers when sold while outside the areas described in paragraphs (a)(1)(i) and (ii) are covered in §30.26.)

(iv) Notwithstanding exemptions in Subpart D, EEI shall be filed for the following types of export shipments, regardless of value:

(A) Requiring a Department of Commerce, Bureau of Industry and Security (BIS) license or requiring reporting under the Export Administration Regulations (15 CFR 758.1(b)).

(B) Requiring a Department of State, Directorate of Defense Trade Controls (DDTC) license under the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120 through 130).

(C) Subject to the ITAR, but exempt from license requirements, except as noted by the ITAR.

(D) Requiring a Department of Justice, Drug Enforcement Administration (DEA) export permit (21 CFR 1312).

(E) Requiring a general or specific export license issued by the U.S. Nuclear Regulatory Commission under 10 CFR part 110.

(F) Requiring an export license issued by any other federal government agency.

(G) Classified as rough diamonds under 6-digit HS subheadings 7102.10, 7102.21, and 7102.31.

(H) Used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations, except as noted in CBP regulations.

NOTE TO PARAGRAPH (a)(1)(iv): For the filing requirement for exports destined for a country in Country Group E:1 or E:2 as set forth in the Supplement No. 1 to 15 CFR part 740, see FTR §30.16.

(2) *Filing methods.* The USPPI has four means for filing EEI: use AES*Direct;* develop AES software using the AESTIR (see *www.cbp.gov/xp/cgov/trade/automated/aes/tech_docs/aestir/*); purchase software developed by certified vendors using the AESTIR; or use an authorized agent. An FPPI can only use an authorized agent in a routed transaction.

(b) *General requirements*—(1) The EEI shall be filed prior to exportation (see §30.4) unless the USPPI has been approved to submit export data on a postdeparture basis (see §30.5(c)). Shipments requiring a license or license exemption may be filed postdeparture only when the appropriate licensing agency has granted the USPPI authorization. See Subpart B of this part.

(2) Specific data elements required for EEI filing are contained in §30.6.

(3) The AES downtime procedures provide uniform instructions for processing export transactions when the government's AES or AES*Direct* is unavailable for transmission. (See §30.4(b)(1) and (4)).

(4) Instructions for particular types of transactions and exemptions from these requirements are found in Subparts C and D of this part.

(5) The EEI is required to be filed in the AES prior to export for shipments by vessel going directly to the countries identified in U.S. Customs and Border Protection regulations 19 CFR 4.75(c) and by aircraft going directly or indirectly to those countries. (See U.S. Customs and Border Protection regulations 19 CFR 122.74(b)(2).)

(c) *Application and certification process.* The USPPI or authorized agent will either submit an ACE Exporter Account Application or a Letter of Intent based on their transmission method and, as a result, may be subject to the certification process.

(1) *AESDirect.* USPPIs or authorized agents who choose to file via the AESDirect shall complete an online ACE Exporter Account Application. In addition, once the ACE Exporter Account is created, all users must agree to the AES Certification Statements prior to filing through AESDirect.

(2) *Methods other than AESDirect.* USPPIs or authorized agents who choose to file by a means other than AESDirect shall submit a Letter of Intent to CBP and may be required to complete the certification process.

(i) *Certification.* A two-part communication test to ascertain whether the system is capable of both transmitting data to and receiving responses from the AES. CBP client representatives make the sole determination as to whether or not the system of the self-programming filer, service center, or software vendor passes certification.

(ii) *Parties requiring certification:*

(A) Self-programming USPPIs or authorized agents;

(B) Service centers; and

(C) Software vendors who develop AES software.

(d) *Exclusions from filing EEI.* The following types of transactions are outside the scope of this part and shall be excluded from EEI filing.

(1) Goods shipped under CBP bond through the United States, Puerto Rico, or the U.S. Virgin Islands from one foreign country or area to another where such goods do not enter the consumption channels of the United States.

(2) Except Puerto Rico and the U.S. Virgin Islands, goods shipped from the U.S. territories and goods shipped between the United States and these territories do not require EEI filing. However, goods transiting U.S. territories to foreign destinations require EEI filing.

(3) Electronic transmissions and intangible transfers.

(4) Goods shipped to Guantanamo Bay Naval Base in Cuba from the United States, Puerto Rico, or the U.S. Virgin Islands and from Guantanamo Bay Naval Base to the United States, Puerto Rico, or the U.S. Virgin Islands. (See §30.39 for filing requirements for shipments exported to the U.S. Armed Services.)

(5) Goods licensed by a U.S. federal government agency where the country of ultimate destination is the United States or goods destined to international waters where the person(s) or entity assuming control of the item(s) is a citizen or permanent resident alien of the United States or a juridical entity organized under the laws of the United States or a jurisdiction within the United States.

(e) *Penalties.* Failure of the USPPI, the authorized agent of either the USPPI or the FPPI, the exporting carrier, or any other person subject thereto to comply with any of the requirements of the regulations in this part renders such persons subject to the penalties provided for in Subpart H of this part.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16375, Mar. 14, 2013; 82 FR 18389, Apr. 19, 2017; 88 FR 54326, Aug. 10, 2023]

§30.3 Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions.

(a) *General requirements.* The filer of EEI for export transactions is either the USPPI, or the U.S. authorized agent. All EEI submitted to the AES shall be complete, correct, and based on personal knowledge of the facts stated or on information furnished by the parties to the export transaction. The filer shall be physically located in the United States at the time of filing, have an EIN or DUNS and be certified to report in the AES. In the event that the filer does not have an EIN or DUNS, the filer must obtain an EIN from the Internal Revenue Service. The filer is responsible for the truth, accuracy, and completeness of the EEI, except insofar as that party can demonstrate that it reasonably relied on information furnished by other responsible persons participating in the transaction. All parties involved in export transactions, including U.S. authorized agents, should be aware that

invoices and other commercial documents may not necessarily contain all the information needed to prepare the EEI. The parties shall ensure that all information needed for reporting to the AES, including correct export licensing information, is provided to the U.S. authorized agent for the purpose of correctly preparing the EEI.

(b) *Parties to the export transaction*—(1) *Principal parties in interest.* Those persons in a transaction that receive the primary benefit, monetary or otherwise, are considered principal parties to the transaction. Generally, the principal parties in interest in a transaction are the seller and buyer. In most cases, the forwarding or other agent is not a principal party in interest.

(2) *USPPI.* For purposes of filing EEI, the USPPI is the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the transaction. Generally, that person or entity is the U.S. seller, manufacturer, order party, or foreign entity if in the United States at the time goods are purchased or obtained for export. The foreign entity shall be listed as the USPPI if it is in the United States when the items are purchased or obtained for export. The foreign entity shall then follow the provisions for filing the EEI specified in §§ 30.3 and 30.6 pertaining to the USPPI.

(i) If a U.S. manufacturer sells goods directly to an entity in a foreign area, the U.S. manufacturer shall be listed as the USPPI in the EEI.

(ii) If a U.S. manufacturer sells goods, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the goods for export to a FPPI, the U.S. buyer (wholesaler/distributor) shall be listed as the USPPI in the EEI.

(iii) If a U.S. order party directly arranges for the sale and export of goods to the FPPI, the U.S. order party shall be listed as the USPPI in the EEI.

(iv) If a customs broker is listed as the importer of record when entering goods into the United States for immediate consumption or warehousing entry, the customs broker may be listed as the USPPI in the EEI if the goods are subsequently exported without change or enhancement.

(v) If a foreign person is listed as the importer of record when entering goods into the United States for immediate consumption or warehousing entry, the customs broker who entered the goods, may be listed as the USPPI in the EEI if the goods are subsequently exported without change or enhancement.

(3) *Authorized agent.* The agent shall be authorized by the USPPI or, in the case of a routed export transaction, the agent shall be authorized by the FPPI to prepare and file the EEI. In a routed export transaction, the authorized agent can be the ''exporter'' for export control purposes as defined in 15 CFR 772.1 of the U.S. Department of Commerce EAR. However, the authorized agent shall not be shown as the USPPI in the EEI unless the agent acts as a USPPI in the export transaction as defined in paragraphs (b)(2)(iii), (iv), and (v) of this section.

(4) *Carrier.* A carrier is an individual or legal entity in the business of transporting passengers or goods. Airlines, trucking companies, railroad companies, shipping lines, and pipeline companies are all examples of carriers.

(c) *General responsibilities of parties in export transactions*—(1) *USPPI responsibilities.* (i) The USPPI can prepare and file the EEI itself, or it can authorize an agent to prepare and file the EEI on its behalf. If the USPPI prepares the EEI itself, the USPPI is responsible for the accuracy and timely transmission of all the export information reported to the AES.

(ii) When the USPPI authorizes an agent to file the EEI on its behalf, the USPPI is responsible for:

(A) Providing the authorized agent with accurate and timely export information necessary to file the EEI.

(B) Providing the authorized agent with a power of attorney or written authorization to file the EEI (see paragraph (f) of this section for written authorization requirements for agents).

(C) Retaining documentation to support the information provided to the authorized agent for filing the EEI, as specified in § 30.10.

(2) *Authorized agent responsibilities.* The agent, when authorized by a USPPI to prepare and file the EEI for an export transaction, is responsible for performing the following activities:

(i) Accurate preparation and timely filing of the EEI based on information received from the USPPI and other parties involved in the transaction.

(ii) Obtaining a power of attorney or written authorization from the USPPI to file the EEI.

(iii) Retaining documentation to support the information reported to the AES, as specified in § 30.10.

(iv) Upon request, providing the USPPI with a copy of the export information filed in a mutually agreed upon format.

(3) *Carrier responsibilities.* (i) The carrier must not load or move cargo unless the required documentation, from the USPPI or authorized agent, contains the required AES proof of filing, postdeparture, downtime, exclusion or exemption citations. This information must be cited on the first page of the bill of lading, air waybill, or other commercial loading documents.

(ii) The carrier must annotate the AES proof of filing, postdeparture, downtime, exclusion or exemption citations on the carrier's outbound manifest when required.

(iii) The carrier is responsible for presenting the required AES proof of filing, postdeparture, downtime, exclusion or exemption citations to the CBP Port Director at the port of export as stated in Subpart E of this part. Such presentation shall be without material change or amendment of the proof of filing, postdeparture, downtime, exclusion or exemption citation.

(iv) The carrier shall notify the USPPI or the authorized agent of changes to the transportation data, and the USPPI or the authorized agent shall electronically transmit the corrections, cancellations, or amendments as soon as the corrections are known in accordance with § 30.9. Manifest amendments must be made in accordance with CBP regulations.

(v) Retain documents pertaining to the export shipment as specified in § 30.10.

(d) *Filer responsibilities.* Responsibilities of USPPIs and authorized agents filing EEI are as follows:

(1) Filing complete and accurate information (see § 30.4 for a delineation of filing responsibilities of USPPIs and authorized agents).

(2) Filing information in a timely manner in accordance with the provisions and requirements contained in this part.

(3) Responding to fatal errors, warning, verify and reminder messages, and compliance alerts generated by the AES in accordance with provisions and requirements contained in this part.

(4) Providing the exporting carrier with the required proof of filing citations or exemption legends in accordance with provisions contained in this part.

(5) Promptly filing corrections or cancellations to EEI in accordance with provisions contained in § 30.9.

(6) Retaining all necessary and proper documentation related to EEI transactions in accordance with provisions contained in this part (see § 30.10 for specific requirements for retaining and producing documentation for export shipments).

(e) *Responsibilities of parties in a routed export transaction.* The Census Bureau recognizes ''routed export transactions'' as a subset of export transactions. A routed export transaction is a transaction in which the FPPI authorizes a U.S. agent to facilitate the export of items from the United States and to prepare and file EEI.

(1) *USPPI responsibilities.* In a routed export transaction, the FPPI may authorize or agree to allow the USPPI to prepare and file the EEI. If the FPPI agrees to allow the USPPI to file the EEI, the FPPI must provide a written authorization to the USPPI assuming the responsibility for filing. The USPPI may authorize an agent to file the EEI on its behalf. If the USPPI or its agent prepares and files the EEI, it shall retain documentation to support the EEI filed. If the FPPI agrees to allow the USPPI to file EEI, the filing of the export transaction shall be treated as a routed export transaction. If the FPPI authorizes an agent to prepare and file the EEI, the USPPI shall retain documentation to support the information provided to the agent for preparing the EEI as specified in § 30.10 and provide the agent with the following information to assist in preparing the EEI:

(i) Name and address of the USPPI.

(ii) USPPI Identification Number.

(iii) State of origin (State).

(iv) FTZ if applicable.
(v) Commercial description of commodities.
(vi) Origin of goods indicator: Domestic (D) or Foreign (F).
(vii) Schedule B or HTSUSA, Classification Commodity Code.
(viii) Quantities/units of measure.
(ix) Value.
(x) Export Control Classification Number (ECCN) or sufficient technical information to determine the ECCN.
(xi) All licensing information necessary to file the EEI for commodities where the Department of State, the Department of Commerce, or other U.S. government agency issues a license for the commodities being exported, or the merchandise is being exported under a license exemption or license exception.
(xii) Any information that it knows will affect the determination of license authorization (see Subpart B of this part for additional information on licensing requirements).

NOTE TO PARAGRAPH (e)(1) OF THIS SECTION: For items in paragraph (e) (1) (ix), (x),(xi) and (xii) of this section, where the FPPI has assumed responsibility for determining and obtaining license authority see requirements set forth in 15 CFR 758.3 of the EAR.

(2) *Authorized agent responsibilities.* In a routed export transaction, if an authorized agent is preparing and filing the EEI on behalf of the FPPI, the authorized agent must obtain a power of attorney or written authorization from the FPPI and prepare and file the EEI based on information obtained from the USPPI or other parties involved in the transaction. The authorized agent shall be responsible for filing EEI accurately and timely in accordance with the FTR. Upon request, the authorized agent will provide the USPPI with a copy of the power of attorney or written authorization from the FPPI. The authorized agent shall also retain documentation to support the EEI reported through the AES. The authorized agent shall upon request, provide the USPPI with the data elements in paragraphs (e)(1)(i) through (xii) of this section, the date of export as submitted through the AES, the filer name, and the ITN. The authorized agent shall provide the following information through the AES:
(i) Date of export.
(ii) Transportation Reference Number.
(iii) Ultimate consignee.
(iv) Intermediate consignee, if applicable.
(v) Authorized agent name and address.
(vi) EIN or DUNS of the authorized agent.
(vii) Country of ultimate destination.
(viii) Method of transportation.
(ix) Carrier identification and conveyance name.
(x) Port of export.
(xi) Foreign port of unlading.
(xii) Shipping weight.
(xiii) ECCN.
(xiv) License or license exemption information.
(xv) Ultimate consignee type.

NOTE TO PARAGRAPH (e)(2) OF THIS SECTION: For items in paragraphs (e)(2)(xiii) and (xiv) of this section, where the FPPI has assumed responsibility for determining and obtaining license authority, see requirements set forth in 15 CFR 758.3 of the EAR.

(f) *Authorizing an 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 an authorized agent is filing EEI to the AES, the agent shall 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 agent has authority to act on behalf of a principal party in interest as its true and lawful agent for purposes of creating and filing EEI in accordance with the laws and regulations of the United States. In routed export transactions the USPPI is not required to provide an agent of the FPPI with a power of attorney or written authorization.

NOTE TO § 30.3: 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 772 of the EAR). For statistical purposes ''exporter'' is not defined in the FTR. Instead, however, the USPPI is defined in the FTR.

For purposes of licensing responsibility under the EAR, the U.S. agent of the FPPI may be the ''exporter'' or applicant on the license in certain routed export transactions (see 15 CFR 758.3 of the EAR). Therefore, due to the differences in export reporting requirements among Federal agencies, conformity of documentation is not required in the FTR.

[73 FR 31555, June 2, 2008, as amended at 74 FR 38916, Aug. 5, 2009; 78 FR 16375, Mar. 14, 2013; 82 FR 18389, Apr. 19, 2017; 82 FR 43843, Sept 20, 2017; 88 FR 54326, Aug. 10, 2023]

§ 30.4 Electronic Export Information filing procedures, deadlines, and certification statements.

Two electronic filing options (predeparture and postdeparture) for transmitting EEI are available to the USPPI or authorized agent. The electronic postdeparture filing takes into account that complete information concerning export shipments may not always be available prior to exportation and accommodates these circumstances by providing, when authorized, for filing of EEI after departure. For example, for exports of seasonal and agricultural commodities, only estimated quantities, values, and consignees may be known prior to exportation. The procedures for obtaining certification as an AES filer and for applying for authorization to file on a postdeparture basis are described in § 30.5.

(a) *EEI transmitted predeparture.* The EEI shall always be transmitted prior to departure for the following types of shipments:

(1) Used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations.

(2) Essential and precursor chemicals requiring a permit from the DEA;

(3) Shipments defined as ''sensitive'' by Executive Order;

(4) Shipments where a U.S. government agency requires predeparture filing;

(5) Shipments defined as ''routed export transactions'' (see § 30.3(e));

(6) Shipments where complete outbound manifests are required prior to clearing vessels going directly to the countries identified in U.S. Customs and Border Protection regulations 19 CFR 4.75(c) and aircraft going directly or indirectly to those countries. (See U.S. Customs and Border Protection regulation 19 CFR 122.74(b)(2));

(7) Items identified on the USML of the ITAR (22 CFR 121);

(8) Shipments that require a license from the BIS and exports listed under BIS's grounds for denial of postdeparture filing status (see 15 CFR 758.2);

(9) Shipments that require a license from the Nuclear Regulatory Commission.

(10) Shipments of rough diamonds classified under HS subheadings 7102.10, 7102.21, and 7102.31 and exported (reexported) in accordance with the Kimberley Process; and

(11) Shipments for which the USPPI has not been approved for postdeparture filing.

(b) *Filing deadlines for EEI transmitted predeparture.* The USPPI or the authorized agent shall file the required EEI and have received the AES ITN no later than the time period specified as follows:

(1) For USML shipments, refer to the ITAR (22 CFR 123.22(b)(1)) for specific requirements concerning predeparture filing time frames. In addition, if a filer is unable to acquire an ITN because the AES or AES*Direct* is not operating, the filer shall not export until the AES is operating and an ITN is acquired. The downtime filing citation is not to be used when the filer's system is down or experiencing delays.

(2) For non-USML shipments, except shipments between the United States and Puerto Rico, file the EEI and provide the ITN as follows (See § 30.4(b)(3), for filing timeframes for shipments between the United States and Puerto Rico):

(i) For vessel cargo, the USPPI or the authorized agent shall file the EEI required by § 30.6 and provide the filing citation or exemption legend to the exporting carrier twenty-four hours prior to loading cargo on the vessel at the U.S. port where the cargo is laden.

(ii) For air cargo, including cargo being transported by Air Express Couriers, the USPPI or the authorized agent shall file the EEI required by § 30.6 and provide the filing citation or

exemption legend to the exporting carrier no later than two (2) hours prior to the scheduled departure time of the aircraft.

(iii) For truck cargo, including cargo departing by Express Consignment Couriers, the USPPI or the authorized agent shall file the EEI required by §30.6 and provide the filing citation or exemption legend to the exporting carrier no later than one (1) hour prior to the arrival of the truck at the United States border to go foreign.

(iv) For rail cargo, the USPPI or the authorized agent shall file the EEI required by §30.6 and provide the filing citation or exemption legend to the exporting carrier no later than two (2) hours prior to the time the train arrives at the U.S. border to go foreign.

(v) For mail, the USPPI or the authorized agent shall file the EEI as required by §30.6 and provide the proof of filing citation, postdeparture filing citation, AES downtime filing citation, exemption or exclusion legend to the U.S. Postal Service no later than two (2) hours prior to exportation.

(vi) For all other modes, the USPPI or the authorized agent shall file the required EEI no later than two (2) hours prior to exportation.

(3) For shipments between the United States and Puerto Rico, the USPPI or authorized agent shall provide the proof of filing citation, postdeparture filing citation, AES downtime filing citation, exemption or exclusion legend to the exporting carrier by the time the shipment arrives at the port of unlading.

(4) For non-USML shipments when the AES or AES*Direct* is unavailable, use the following instructions:

(i) If the participant's AES is unavailable, the filer must delay the export of the goods or find an alternative filing method;

(ii) If AES or AES*Direct* is unavailable, the goods may be exported and the filer must:

(A) Provide the appropriate downtime filing citation as described in §30.7(b) and appendix B of this part; and

(B) Report the EEI at the first opportunity AES or AES*Direct* is available.

(5) For used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations, the USPPI or the authorized agent shall file the EEI as required by §30.6 and provide the filing citation to the CBP at least 72 hours prior to export. The filer must also provide the carrier with the filing citation as required by paragraph (b) of this section.

(c) *EEI transmitted postdeparture*—(1) *Postdeparture filing procedures.* Postdeparture filing is only available for approved USPPIs. For all methods of transportation other than pipeline, approved USPPIs or their authorized agent may file data elements required in accordance with §30.6 no later than five (5) calendar days after the date of exportation, except for shipments where predeparture filing is specifically required.

(2) *Pipeline filing procedures.* USPPIs or authorized agents may file data elements required by §30.6 no later than four (4) calendar days following the end of the month. The operator of a pipeline may transport goods to a foreign country without the prior filing of the proof of filing citation, exemption, or exclusion legend, on the condition that within four (4) calendar days following the end of each calendar month the operator will deliver to the CBP Port Director the proof of filing citation, exemption, or exclusion legend covering all exports through the pipeline to each consignee during the month.

(d) *Proof of filing citation and exemption and exclusion legends.* The USPPI or the authorized agent shall provide the exporting carrier with the proof of filing citation and exemption and exclusion legends as described in §30.7.

(e) *Collection of KPCs and voided KPCs.* Any voided KPC must be faxed by the voiding party to the Census Bureau on (800) 457–7328, or provided by other methods as permitted by the Census Bureau, immediately upon voiding. The collection of KPCs, including voided KPCs, is performed pursuant to the Clean Diamond Trade Act, Public Law 108–19, 19 U.S.C. Section 3901 *et seq.* (CDTA), and Executive Order 13312, and not Title 13, U.S.C.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16376, Mar. 14, 2013; 82 FR 18390, Apr. 19, 2017; 82 FR 43843, Sept. 20, 2017; 83 FR 17751, Apr. 24, 2018]

§ 30.5 Electronic Export Information filing processes and standards.

(a)–(b) [Reserved]

(c) *Postdeparture filing approval process.* Postdeparture filing is a privilege granted to approved USPPIs for their EEI to be filed up to five (5) calendar days after the date of export. The USPPI or its authorized agent may not transmit EEI postdeparture for certain types of shipments that are identified in §30.4(a). The USPPI may apply for postdeparture filing privileges by submitting a postdeparture filing application at *www.census.gov/aes.* An authorized agent may not apply on behalf of a USPPI. The Census Bureau will distribute the applications submitted by USPPI's who are applying for postdeparture to the CBP and the other federal government partnership agencies for their review and approval. Failure to meet the standards of the Census Bureau, CBP or any of the partnership agencies is reason for denial of the AES applicant for postdeparture filing privileges. Each partnership agency will develop its own internal postdeparture filing acceptance standards, and each agency will notify the Census Bureau of the USPPI's success or failure to meet that agency's acceptance standards. Any partnership agency may require additional information from USPPIs that are applying for postdeparture filing. The Census Bureau will notify the USPPI of the decision to either deny or approve its application for postdeparture filing privileges within ninety (90) calendar days of receipt of the postdeparture filing application by the Census Bureau.

(1) *Grounds for denial of postdeparture filing status.* The Census Bureau may deny a USPPI's application for postdeparture filing privileges for any of the following reasons:

(i) There is no history of filing for the USPPI through the AES.

(ii) The USPPI's volume of EEI reported through the AES does not warrant participation in postdeparture filing.

(iii) The USPPI or its authorized agent has failed to submit EEI through the AES in a timely and accurate manner.

(iv) The USPPI has a history of noncompliance with the Census Bureau export regulations contained in this part.

(v) The USPPI 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 USPPI is in violation of Census Bureau export regulations contained in this part.

(vi) The USPPI has made or caused to be made in the LOI a false or misleading statement or omission with respect to any material fact.

(vii) The USPPI would pose a significant threat to national security interests such that its participation in postdeparture filing should be denied.

(viii) The USPPI has multiple violations of either the EAR (15 CFR 730 through 774) or the ITAR (22 CFR 120 through 130) within the last three (3) years.

(ix) The USPPI fails to demonstrate the ability to meet the AES predeparture filing requirements.

(2) *Notice of denial.* A USPPI denied postdeparture filing privileges by other agencies shall contact those agencies regarding the specific reason(s) for nonselection and for their appeal procedures. A USPPI denied postdeparture filing status by the Census Bureau will be provided with a specific reason for nonselection and a Census Bureau point of contact in an electronic notification letter. A USPPI may appeal the Census Bureau's nonselection decision by following the appeal procedure and reapplication procedure provided in paragraph (c)(5) of this section.

(3) *Revocation of postdeparture filing privileges*—(i) *Revocation by the Census Bureau.* The Census Bureau may revoke postdeparture filing privileges of an approved USPPI for the following reasons:

(A) The USPPI's volume of EEI reported in the AES does not warrant continued participation in postdeparture filing;

(B) The USPPI or its authorized agent has failed to submit EEI through the AES in a timely and accurate manner;

(C) The USPPI has made or caused to be made in the LOI a false or misleading statement or omission with respect to material fact;

(D) The USPPI submitting the LOI 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 AES applicant is in violation of export rules and regulations contained in this part;

(E) The USPPI has failed to comply with existing export regulations or has failed to pay any outstanding penalties assessed in connection with such noncompliance; or

(F) The USPPI would pose a significant threat to national security interests such that its continued participation in postdeparture filing should be terminated.

(G) The USPPI or its authorized agent files postdeparture for commodities that are identified in §30.4(a).

(ii) *Revocation by other agencies.* Any of the other agencies may revoke a USPPI's postdeparture filing privileges with respect to transactions subject to the jurisdiction of that agency. When doing so, the agency shall notify both the Census Bureau and the USPPI whose authorization is being revoked.

(4) *Notice of revocation.* Approved postdeparture filing USPPIs whose postdeparture filing privileges have been revoked by other agencies shall contact those agencies for their specific revocation and appeal procedures. When the Census Bureau makes a determination to revoke an approved USPPI's postdeparture filing privileges, the USPPI will be notified electronically of the reason(s) for the decision. In most cases, the revocation shall become effective when the USPPI has either exhausted all appeal procedures, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases judged to affect national security, revocations shall become effective immediately upon notification.

(5) *Appeal procedure.* Any USPPI whose request for postdeparture filing privileges has been denied by the Census Bureau or whose postdeparture filing privileges have been revoked by the Census Bureau may appeal the decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Appeals should be addressed to the Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233–6700. The Census Bureau will issue a written decision to the USPPI 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, the Census Bureau will forward to the USPPI a notice of extension within that time period. The USPPI will be provided with the reasons for the extension of this time period and an expected date of decision. The USPPIs who have had their postdeparture filing status denied or revoked may not reapply for this privilege for one year following written notification of the denial or revocation.

(d) *Electronic Export Information filing standards.* The data elements required for filing EEI are contained in §30.6. When filing EEI, the USPPI or authorized agent shall comply with the data transmission procedures determined by CBP and the Census Bureau and shall agree to stay in complete compliance with all export rules and regulations in this part. Failure of the USPPI or the authorized agent of either the USPPI or FPPI to comply with these requirements constitutes a violation of the regulations in this part, and renders such principal party or the authorized agent subject to the penalties provided for in Subpart H of this part. In the case of AES*Direct*, when submitting a registration form to AES*Direct*, the registering company is certifying that it will be in compliance with all applicable export rules and regulations. This includes complying with the following security requirements:

(1) AES*Direct* user names and passwords are to be kept secure by the account administrator and not disclosed to any unauthorized user or any persons outside the registered company.

(2) Registered companies are responsible for those persons having a user name and password. If an employee with a user name and password leaves the company or otherwise is no longer an authorized user, the company shall immediately deactivate that username

in the system to ensure the integrity and confidentiality of Title 13 data.

(e) *Monitoring the filing of EEI.* The USPPI's or the authorized agent's AES filings will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will provide performance reports to USPPIs and authorized agents who file EEI. The Census Bureau will take appropriate action to correct specific situations where the USPPI or authorized agent fails to maintain acceptable levels of data quality, timeliness, or coverage.

(f) *Support.* The Census Bureau provides online services that allow the USPPI and the authorized agent to seek assistance pertaining to the AES and this part. For AES assistance, filers may send an email to *ASKAES@census.gov*. For FTR assistance, filers may send an email to *itmd.askregs@census.gov*.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16376, Mar. 14, 2013; 82 FR 18390, Apr. 19, 2017]

§ 30.6 Electronic Export Information data elements.

The information specified in this section is required for EEI transmitted to the AES. The data elements identified as ''mandatory'' shall be reported for each transaction. The data elements identified as ''conditional'' shall 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 USPPI or the authorized agent. Additional data elements may be required to be reported in the AES in accordance with other federal agencies' regulations. Refer to the other agencies' regulations for reporting requirements.

(a) Mandatory data elements are as follows:

(1) *USPPI.* The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. The name, address, identification number, and contact information of the USPPI shall be reported to the AES as follows:

(i) *Name of the USPPI.* In all export transactions, the name listed in the USPPI field in the EEI shall be the USPPI in the transaction. (See § 30.1 for the definition of the USPPI and § 30.3 for details on the USPPI's reporting responsibilities.)

(ii) *Address of the USPPI.* In all EEI filings, the USPPI shall report the address or location (no post office box number) from which the goods actually begin the journey to the port of export even if the USPPI does not own/lease the facility. For example, the EEI covering goods 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. For shipments with multiple origins, report the address from which the commodity with the greatest value begins its export journey. If such information is not known, report the address in the state where the commodities are consolidated for export.

(iii) *USPPI identification number.* Report the Employer Identification Number (EIN) of the USPPI. If the USPPI has only one EIN, report that EIN. If the USPPI has more than one EIN, report the EIN that the USPPI uses to report employee wages and withholdings, and not the EIN used to report only company earnings or receipts. Use of another company's EIN is prohibited. If a USPPI reports a DUNS, the EIN is also required to be reported. If a foreign entity is in the United States at the time goods are purchased or obtained for export, the foreign entity is the USPPI. In such situations, when the foreign entity does not have an EIN, the authorized agent shall report a border crossing number, passport number, or any number assigned by CBP on behalf of the foreign entity.

(iv) *USPPI contact information.* The person who has the most knowledge regarding the specific shipment or related export controls.

(2) *Date of export.* The date of export is the date when goods are scheduled to leave the port of export on the exporting carrier that is taking the goods out of the United States.

(3) *Ultimate consignee.* The ultimate consignee is the person, party, or designee that is located abroad and actually receives the export shipment. The name and address of the ultimate consignee, whether by sale in the United States or abroad or by consignment, shall be reported in the EEI. The ultimate consignee as known at the time of export shall be reported. For shipments requiring an export license including shipments to international waters, the ultimate consignee reported in the AES shall be the person so designated on the export license or authorized to be the ultimate consignee under the applicable license exemption or exception in conformance with the EAR or ITAR, as applicable. For goods sold en route, report the appropriate ''To be Sold En Route'' indicator in the EEI, and report corrected information as soon as it is known (see § 30.9 for procedures on correcting AES information).

(4) *U.S. state of origin.* The U.S. state of origin is the 2-character postal code for the state in which the goods begin their journey to the port of export. For example, a shipment covering goods 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. The U.S. state of origin may be different from the U.S. state where the goods were produced, mined, or grown. For shipments of multi-state origin, reported as a single shipment, report the U.S. state of the commodity with the greatest value. If such information is not known, report the state in which the commodities are consolidated for export.

(5) *Country of ultimate destination.* The country of ultimate destination is the country in which goods are to be consumed, further processed, stored, or manufactured, as known to the USPPI at the time of export. The country of ultimate destination is the code issued by the ISO.

(i) *Shipments under an export license.* For shipments under an export license issued by the Department of State, Directorate of Defense Trade Controls (DDTC), or the Department of Commerce, Bureau of Industry and Security (BIS), the country of ultimate destination shall conform to the country of ultimate destination as shown on the license. In the case of a DDTC or BIS license, the country of ultimate destination is the country specified with respect to the end user, which may also be the ultimate consignee. For goods licensed by other government agencies, refer to the agencies' specific requirements for providing country of ultimate destination information.

(ii) *Shipments not moving under an export license.* The country of ultimate destination is the country known to the USPPI or U.S. authorized agent at the time of exportation. The country to which the goods are being shipped is not the country of ultimate destination if the USPPI or U.S. authorized agent has knowledge, at the time the goods leave the United States, that they are intended for reexport or transshipment in the form received to another known country. For goods shipped to Canada, Mexico, Panama, Hong Kong, Belgium, United Arab Emirates, The Netherlands, or Singapore, special care should be exercised before reporting these countries as the ultimate destinations because these are countries through which goods from the United States are frequently transshipped. If the USPPI or U.S. authorized agent does not know the ultimate destination of the goods, the country of ultimate destination to be shown is the last country, as known to the USPPI or U.S. authorized agent at the time the goods leave the United States, to which the goods are to be shipped in their present form. (For instructions as to the reporting of country of ultimate destination for vessels sold or transferred from the United States to foreign ownership, see § 30.26). In addition, the following types of shipments must be reported as follows:

(A) *Department of State, DDTC, license exemption.* The country of ultimate destination is the country specified with respect to the end user as noted in the ITAR (22 CFR 123.9(a)).

(B) *Department of Commerce, BIS, license exception.* The country of ultimate destination is the country of the end user as defined in 15 CFR 772.1 of the Export Administration Regulations (EAR).

(C) *For shipments to international waters.* The country of ultimate destination is the nationality of the person(s) or entity assuming control of the good(s) exported to international waters.

(iii) For goods to be sold en route, report the country of the first port of call and then report corrected information as soon as it is known.

(6) *Method of transportation.* The method of transportation is the means by which the goods are exported from the United States.

(i) *Conveyances exported under their own power.* The mode of transportation for aircraft, vessels, or locomotives (railroad stock) transferring ownership or title and moving out of the United States under its own power is the mode of transportation by which the conveyance moves out of the United States.

(ii) *Exports through Canada, Mexico, or other foreign countries for transshipment to another destination.* For transshipments through Canada, Mexico, or another foreign country, the mode of transportation is the mode of the carrier transporting the goods out of the United States.

(7) *Conveyance name/carrier name.* The conveyance name/carrier name is the name of the conveyance/carrier transporting the goods out of the United States as known at the time of exportation. For exports by sea, the conveyance name is the vessel name. For exports by air, rail, or truck, the carrier name is that which corresponds to the carrier identification as specified in paragraph (a)(8) of this section. Terms, such as airplane, train, rail, truck, vessel, barge, or international footbridge are not acceptable. For shipments by other methods of transportation, including mail, fixed methods (pipeline), the conveyance/carrier name is not required.

(8) *Carrier identification.* The carrier identification is the Standard Carrier Alpha Code (SCAC) for vessel, rail, and truck shipments or the International Air Transport Association (IATA) code for air shipments. The carrier identification specifies the carrier that transports the goods out of the United States. The carrier transporting the goods to the port of export and the carrier transporting the goods out of the United States may be different. For vessel shipments, report the carrier identification code of the party whose booking number was reported in the AES. For transshipments through Canada, Mexico, or another foreign country, the carrier identification is that of the carrier that transports the goods out of the United States. For modes other than vessel, air, rail and truck valid methods of transportation, including but not limited to mail, fixed transport (pipeline), and passenger hand carried, the carrier identification is not required. The National Motor Freight Traffic Association (NMFTA) issues and maintains the SCAC. (See *www.nmfta.org.*) The IATA issues and maintains the IATA codes. (See *www.census.gov/trade* for a list of IATA codes.)

(9) *Port of export.* The port of export is the U.S. Customs and Border Protection (CBP) seaport or airport where the goods are loaded on the carrier that is taking the goods out of the United States, or the CBP port where exports by overland transportation cross the U.S. border into Canada or Mexico. For EEI reporting purposes only, for goods loaded aboard a conveyance (aircraft or vessel) that stops at several ports before clearing to the foreign country, the port of export is the first port where the goods were loaded on this conveyance. For goods off-loaded from the original conveyance to another conveyance (even if the aircraft or vessel belongs to the same carrier) at any of the ports, the port where the goods were loaded on the last conveyance before going foreign is the port of export. The port of export shall be reported in terms of Schedule D, ''Classification of CBP Districts and Ports.'' Use port code 8000 for shipments by mail.

(10) *Related party indicator.* Used to indicate when a transaction involving trade between a USPPI and an ultimate consignee where either party owns directly or indirectly 10 percent or more of the other party.

(11) *Domestic or foreign indicator.* Indicates if the goods exported are of domestic or foreign origin. Report foreign goods as a separate line item from domestic goods even if the commodity classification number is the same.

(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* in the EEI. The 10-digit commodity classification number provided in the Harmonized Tariff Schedule of the United States (HTSUSA) may be reported in lieu of the Schedule B commodity classification number except as noted in the headnotes of the HTSUSA. The HTSUSA is a global classification system used to describe most world trade in goods. Furnishing the correct Schedule B or HTSUSA number does not relieve the USPPI or the authorized agent of furnishing a complete and accurate commodity description. When reporting the Schedule B number or HTSUSA number, the decimals shall be omitted. (See *http://www.census.gov/trade* for a list of Schedule B classification numbers.)

(13) *Commodity description.* Report the description of the goods shipped in English in sufficient detail to permit verification of the Schedule B or HTSUSA number. Clearly and fully state the name of the commodity in terms that can be identified or associated with the language used in Schedule B or HTSUSA (usually the commercial name of the commodity), and any and all characteristics of the commodity that distinguish it from commodities of the same name covered by other Schedule B or HTSUSA classifications. If the shipment requires a license, the description reported in the EEI shall conform with that shown on the license. If the shipment qualifies for a license exemption, the description shall be sufficient to ensure compliance with that license exemption. However, where the description on the license does not state all of the characteristics of the commodity that are needed to completely verify the commodity classification number, as described in this paragraph, report the missing characteristics, as well as the description shown on the license, in the commodity description field of the EEI.

(14) *Primary unit of measure.* The unit of measure shall correspond to the primary quantity as prescribed in the Schedule B or HTSUSA. If neither Schedule B nor HTSUSA specifies a unit of measure for the item, an ''X'' is required in the unit of measure field.

(15) *Primary quantity.* The quantity is the total number of units that correspond to the first unit of measure specified in the Schedule B or HTSUSA. Where the unit of measure is in terms of weight (grams, kilograms, metric tons, etc.), the quantity reflects the net weight, not including the weight of barrels, boxes, or other bulky coverings, and not including salt or pickle in the case of salted or pickled fish or meats. For a few commodities where ''content grams'' or ''content kilograms'' or some similar weight unit is specified in Schedule B or HTSUSA, the quantity may be less than the net weight. The quantity is reported as a whole unit only, without commas or decimals. If the quantity contains a fraction of a whole unit, round fractions of one-half unit or more up and fractions of less than one-half unit down to the nearest whole unit. (For example, where the unit for a given commodity is in terms of ''tons,'' a net quantity of 8.4 tons would be reported as 8 for the quantity. If the quantity is less than one unit, the quantity is 1.)

(16) *Shipping weight.* The shipping weight is the weight in kilograms, which includes the weight of the commodity, as well as the weight of normal packaging, such as boxes, crates, barrels, etc. The shipping weight is required for exports by air, vessel, rail, and truck, and required for exports of household goods transported by all methods. For exports (except household goods) by mail, fixed transport (pipeline), or other valid methods, the shipping weight is not required and shall be reported as zero. For containerized cargo in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers is not included in the shipping weight. If the shipping weight is not available for each Schedule B or HTSUSA item included in one or more containers, the approximate shipping weight for each item is estimated and reported. The total of these estimated weights equals the actual shipping weight of the entire container or containers.

(17) *Value.* In general, the value to be reported in the EEI shall be the value of the goods at the U.S. port of export in U.S. dollars. The value shall be the selling price (or the cost, if the goods are not sold), plus inland or domestic freight, insurance, and other charges to the U.S. seaport, airport, or land border port of export. Cost of goods is the sum of expenses incurred in the USPPI's acquisition or production of the goods. Report the value to the nearest dollar, omit cents. Fractions of a dollar less than 50 cents should be ignored, and fractions of 50 cents or more should be rounded up to the next dollar.

(i) *Selling price.* The selling price for goods exported pursuant to sale, and the value to be reported in the EEI, is the USPPI's price to the FPPI (the foreign buyer). Deduct from the selling price any unconditional discounts, but do not deduct discounts that are conditional upon a particular act or performance on the part of the foreign buyer. For goods shipped on consignment without a sale actually having been made at the time of export, the selling price to be reported in the EEI is the market value at the time of export at the U.S. port.

(ii) *Adjustments.* When necessary, make the following adjustments to obtain the value.

(A) Where goods are sold at a point other than the port of export, freight, insurance, and other charges required in moving the goods from their U.S. point of origin to the exporting carrier at the port of export or border crossing point shall be added to the selling price (as defined in paragraph (a)(17)(i) of this section) for purposes of reporting the value in the EEI.

(B) Where the actual amount of freight, insurance, and other domestic costs is not available, an estimate of the domestic costs shall be made and added to the cost of the goods or selling price to derive the value to be reported in the EEI. Add the estimated domestic costs to the cost or selling price of the goods to obtain the value to be reported in the EEI.

(C) Where goods are sold at a ''delivered'' price to the foreign destination, the cost of loading the goods on the exporting carrier, if any, and freight, insurance, and other costs beyond the port of export shall be subtracted from the selling price for purposes of reporting value in the EEI. If the actual amount of such costs is not available, an estimate of the costs should be subtracted from the selling price.

(D) Costs added to or subtracted from the selling price in accordance with the instructions in this paragraph (a)(17)(ii) should not be shown separately in the EEI, but the value reported should be the value after making such adjustments, where required, to arrive at the value of the goods at the U.S. port of export.

(iii) *Exclusions.* Exclude the following from the selling price of goods exported.

(A) Commissions to be paid by the USPPI to its agent abroad or commissions to be deducted from the selling price by the USPPI's agent abroad.

(B) The cost of loading goods on the exporting carrier at the port of export.

(C) Freight, insurance, and any other charges or transportation costs beyond the port of export.

(D) Any duties, taxes, or other assessments imposed by foreign countries.

(iv) For definitions of the value to be reported in the EEI for special types of transactions where goods are not being exported pursuant to commercial sales, or where subsidies, government financing or participation, or other unusual conditions are involved, see Subpart C of this part.

(18) *Export information code.* A code that identifies the type of export shipment or condition of the exported items (e.g., goods donated for relief or charity, impelled shipments, shipments under the Foreign Military Sales program, household goods, and all other shipments).

(19) *Shipment Reference Number (SRN).* A unique identification number assigned by the filer that allows for the identification of the shipment in the filer's system. The reuse of the SRN is prohibited.

(20) *Line number.* A number that identifies the specific commodity line item within a shipment.

(21) *Hazardous material indicator.* An indicator that identifies whether the shipment is hazardous as defined by the Department of Transportation.

(22) *Inbond code.* The code indicating whether the shipment is being transported under bond.

(23) *License code/license exemption code.* The code that identifies the commodity as having a federal government agency requirement for a license, permit, authorization, license exception or exemption or that no license is required.

(24) *Routed export transaction indicator.* An indicator that identifies that the shipment is a routed export transaction as defined in § 30.3.

(25) *Shipment filing action request indicator.* An indicator that allows the filer to add, change, replace, or cancel an export shipment transaction.

(26) *Line item filing action request indicator.* An indicator that allows the filer to add, change, or delete a commodity line within an export shipment transaction.

(27) *Filing option indicator.* An indicator of whether the filer is reporting export information predeparture or postdeparture. See § 30.4 for more information on EEI filing options.

(28) *Ultimate consignee type.* Provide the business function of the ultimate consignee that most often applies. If more than one type applies to the ultimate consignee, report the type that applies most often. For purposes of this paragraph, the ultimate consignee will be designated as a Direct Consumer, Government Entity, Reseller, or Other/Unknown, defined as follows:

(i) Direct Consumer—a non-government institution, enterprise, or company that will consume or use the exported good as a consumable, for its own internal processes, as an input to the production of another good or as machinery or equipment that is part of a manufacturing process or a provision of services and will not resell or distribute the good.

(ii) Government Entity—a government-owned or government-controlled agency, institution, enterprise, or company.

(iii) Reseller—a non-government reseller, retailer, wholesaler, distributor, distribution center or trading company.

(iv) Other/Unknown—an entity that is not a Direct Consumer, Government Entity or Reseller, as defined above, or whose ultimate consignee type is not known at the time of export.

(b) Conditional data elements are as follows:

(1) *Authorized agent and authorized agent identification.* The authorized agent is the person or entity in the United States who is authorized by the USPPI or the FPPI to prepare and file the EEI or the person or entity, if any, named on the export license. If an authorized agent is used, the following information shall be provided to the AES:

(i) *U.S. Authorized agent's identification number.* Report the U.S. authorized agent's own EIN or DUNS for the first shipment and for each subsequent shipment. Use of another company's or individual's EIN or other identification number is prohibited. The party ID type of agent identification (E = EIN, D = DUNS) shall be indicated.

(ii) *Name of the authorized agent.* Report the name of the authorized agent. (See § 30.3 for details on the specific reporting responsibilities of authorized agents and Subpart B of this part for export control licensing requirements for authorized agents.)

(iii) *Address of the authorized agent.* Report the address or location (no post office box number) of the authorized agent. The authorized agent's address shall be reported with the initial shipment. Subsequent shipments may be identified by the agent's identification number.

(iv) *Contact information.* Report the contact name and telephone number.

(2) *Intermediate consignee.* The name and address of the intermediate consignee (if any) shall be reported. The intermediate consignee acts in a foreign country as an agent for the principal party in interest or the ultimate consignee for the purpose of effecting delivery of the export shipment to the ultimate consignee. The intermediate consignee is the person named as such on the export license or authorized to act as such under the applicable general license and in conformity with the EAR.

(3) *FTZ identifier.* If goods are removed from a FTZ and not entered for

consumption, report the FTZ identifier. This is the unique 9-digit alphanumeric identifier assigned by the Foreign Trade Zone Board that identifies the FTZ, subzone or site from which goods are withdrawn for export.

(4) *Foreign port of unlading*. The foreign port of unlading is the foreign port in the country where the goods are removed from the exporting carrier. The foreign port does not have to be located in the country of destination. For exports by sea to foreign countries, not including Puerto Rico, the foreign port of unlading is the code in terms of Schedule K, *Classification of Foreign Ports by Geographic Trade Area and Country*. For exports by sea or air between the United States and Puerto Rico, the foreign port of unlading is the code in terms of Schedule D, *Classification of CBP Districts and Ports*. The foreign port of unlading is not required for exports by other modes of transportation, including rail, truck, mail, fixed (pipeline), or air (unless between the U.S. and Puerto Rico).

(5) *Export license number/CFR citation/KPC number*. License number, permit number, citation, or authorization number assigned by the Department of Commerce, BIS; Department of State, DDTC; Department of the Treasury, OFAC; Department of Justice, DEA; Nuclear Regulatory Commission; or any other federal government agency.

(6) *Export Control Classification Number (ECCN)*. The number used to identify items on the CCL, Supplement No. 1 to Part 774 of the EAR. The ECCN consists of a set of digits and a letter. Items that are not classified under an ECCN are designated ''EAR99''.

(7) *Secondary unit of measure*. The unit of measure that corresponds to the secondary quantity as prescribed in the Schedule B or HTSUSA. If neither Schedule B nor HTSUSA specifies a secondary unit of measure for the item, the unit of measure is not required.

(8) *Secondary quantity*. The total number of units that correspond to the secondary unit of measure, if any, specified in the Schedule B or HTSUSA. See the definition of primary quantity for specific instructions on reporting the quantity as a weight and whole unit, rounding fractions.

(9) *Vehicle Identification Number (VIN)/Product ID*. The identification number found on the reported used vehicle. For used self-propelled vehicles that do not have a VIN, the Product ID is reported. ''Used'' vehicle refers to any self-propelled vehicle where the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. See U.S. Customs and Border Protection regulations 19 CFR 192.1 for more information on exports of used vehicles.

(10) *Vehicle ID qualifier*. The qualifier that identifies the type of used vehicle number reported. The valid codes are V for VIN and P for Product ID.

(11) *Vehicle title number*. The number issued by the Motor Vehicle Administration.

(12) *Vehicle title state code*. The 2-character postal code for the state or territory that issued the vehicle title.

(13) *Entry number*. The entry number must be reported for goods that are entered in lieu of being transported under bond for which the importer of record is a foreign entity or, for reexports of goods withdrawn from a FTZ for which a NAFTA deferred duty claim (entry type 08) could have been made, but that the importer elected to enter for consumption under CBP entry type 06. For goods imported into the United States for export to a third country of ultimate destination, where the importer of record on the entry is a foreign entity, the USPPI will be the authorized agent designated by the foreign importer for service of process. The USPPI, in this circumstance, is required to report the import entry number.

(14) *Transportation Reference Number (TRN)*. The TRN is as follows:

(i) *Vessel shipments*. Report the booking number for vessel shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported. The TRN is required for all vessel shipments.

(ii) *Air shipments*. Report the master air waybill number for air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the aircraft for cargo being exported. The TRN is optional for air shipments.

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

(iv) *Truck shipments*. Report the freight or pro bill number for 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 multimodal shipments. The TRN is optional for truck shipments.

(15) *License value*. For shipments requiring an export license, report the value designated on the export license that corresponds to the commodity being exported.

(16) *Department of State requirements*. (i) *Directorate of Defense Trade Controls (DDTC) registration number*. The number assigned by the DDTC to persons who are required to register per part 122 of the ITAR (22 CFR parts 120 through 130), and have an authorization (license or exemption) from DDTC to export the article.

(ii) *DDTC Significant Military Equipment (SME) indicator*. A term used to designate articles on the USML (22 CFR part 121) for which special export controls are warranted because of their capacity for substantial military utility or capability. See sections 120.36 and 120.10(c) of the ITAR (22 CFR parts 120 through 130) for a definition of SME and for items designated as SME articles, respectively.

(iii) *DDTC eligible party certification indicator*. Certification by the U.S. exporter that the exporter is an eligible party to participate in defense trade. See 22 CFR 120.16(c). This certification is required only when an exemption is claimed.

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

(iv) *DDTC United States Munitions List (USML) category code*. The USML category of the article being exported (22 CFR part 121).

(v) *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.

(vi) *DDTC quantity*. This quantity is the number of articles being shipped. The quantity is the total number of units that corresponds to the DDTC UOM code.

(vii) *DDTC exemption number*. The exemption number is the specific citation from the ITAR (22 CFR parts 120 through 130) that exempts the shipment from the requirements for a license or other written authorization from DDTC.

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

(ix) *DDTC Category XXI Determination Number*. The unique number issued by DDTC to a member of the regulated community (usually the original equipment manufacturer) in conjunction with a notification that a specific commodity is described in USML Category XXI. This number is required only when citing USML Category XXI as an export classification and is used to confirm that an authoritative USML Category XXI determination is being referenced to do so.

(17) *Kimberley Process Certificate (KPC) number*. The unique identifying number on the KPC issued by the United States Kimberley Process Authority that must accompany all export shipments of rough diamonds. Rough diamonds are classified under 6-digit HS subheadings 7102.10, 7102.21, and 7102.31. Enter the KPC number in the license number field excluding the 2-digit ISO country code for the United States.

(c) *Optional data elements:*

(1) *Seal number*. The security seal number placed on the equipment or container.

(2) *Equipment number*. Report the identification number for the shipping equipment, such as container or igloo number (Unit Load Device (ULD)), truck license number, rail car number, or container number for containerized vessel cargo.

(3) *Original ITN.* The ITN associated with a previously filed shipment that is replaced or divided and for which additional shipment(s) must be filed. The original ITN field can be used in certain scenarios, such as, but not limited to, shipments sold en route or cargo split by the carrier where the succeeding parts of the shipment are not exported within the timeframes specified in § 30.28.

[73 FR 31555, June 2, 2008, as amended at 74 FR 38916, Aug. 5, 2009; 78 FR 16376, Mar. 14, 2013; 82 FR 18390, Apr. 19, 2017; 82 FR 43843, Sept. 20, 2017; 88 FR 54236, Aug. 10, 2023]

§ 30.7 Annotating the bill of lading, air waybill, or other commercial loading documents with proof of filing citations, and exemption legends.

(a) Items identified on the USML shall meet the predeparture reporting requirements identified in the ITAR (22 CFR 120 through 130) for the U.S. State Department requirements concerning the time and place of filing. For USML shipments, the proof of filing citations shall include the statement in ''AES,'' followed by the returned confirmation number provided by the AES when the transmission is accepted, referred to as the ITN.

(b) For shipments other than USML, the USPPI or the authorized agent is responsible for annotating the proper proof of filing citation or exemption legend on the first page of the bill of lading, air waybill, export shipping instructions or other commercial loading documents. The USPPI or the authorized agent must provide the proof of filing citation or exemption legend to the exporting carrier. The carrier must annotate the proof of filing citation, exemption or exclusion legends on the carrier's outbound manifest when required. The carrier is responsible for presenting the appropriate proof of filing citation or exemption legend to CBP Port Director at the port of export as stated in subpart E of this part. Such presentation shall be without material change or amendment of the proof of filing citation, postdeparture filing citation, AES downtime filing citation, or exemption legend as provided to the carrier by the USPPI or the authorized agent. The proof of filing citation will identify that the export information has been accepted as transmitted. The postdeparture filing citation, AES downtime filing citation, or exemption legend will identify that no filing is required prior to export. The proof of filing citations, postdeparture filing citations, or exemption legends shall appear on the bill of lading, air waybill or other commercial loading documentation and shall be clearly visible. The AES filing citation, exemption or exclusion legends are provided for in appendix B of this part. The exporting carrier shall annotate the manifest or other carrier documentation with the AES filing citations, exemption or exclusions legends.

(c) Exports of rough diamonds classified under HS subheadings 7102.10, 7102.21, and 7102.31 require the proof of filing citation, as stated in paragraph (b) of this section, to be indicated on the Kimberley Process Certificate (KPC). In addition, the KPC must be faxed by the USPPI or U.S. authorized agent to the Census Bureau on (800) 457–7328, or provided by other methods as permitted by the Census Bureau, immediately after export of the shipment from the United States.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16378, Mar. 14, 2013; 82 FR 43843, Sept. 20, 2017; 83 FR 17751, Apr. 24, 2018]

§ 30.8 Time and place for presenting proof of filing citations and exemption legends.

The following conditions govern the time and place to present proof of filing citations, postdeparture filing citations, AES downtime filing citation, exemption, or exclusion legends. The USPPI or the authorized agent is required to deliver the proof of filing citations, postdeparture filing citations, AES downtime filing citations, exemption, or exclusion legends required in § 30.7 to the exporting carrier. See appendix B of this part for the properly formatted proof of filing citations, exemption, or exclusion legends. Failure of the USPPI or the authorized agent of either the USPPI or FPPI to comply with these requirements constitutes a violation of the regulations in this part and renders such principal party or the authorized agent subject to the penalties provided for in subpart H of this part.

(a) *Mail exports.* The proof of filing citation, postdeparture filing citation, AES downtime filing citation, exemption and/or exclusion legend for items exported by mail as required in § 30.4(b) shall be annotated on the appropriate U.S. Postal Service customs declaration form (and/or its electronic equivalent) and presented with the packages at the time of mailing. The Postal Service is required to deliver the proof of filing citation, postdeparture filing citation, AES downtime filing citation, exemption or exclusion legend prior to export.

(b) *Pipeline exports.* The proof of filing citations or exemption and exclusion legends for items being sent by pipeline shall be presented to the operator of a pipeline no later than four calendar days after the close of the month. See § 30.4(c)(2) for requirements for the filing of export information by pipeline carriers.

(c) *Exports by other methods of transportation.* For exports sent other than by mail or pipeline, the USPPI or the authorized agent is required to deliver the proof of filing citations and/or exemption and exclusion legends to the exporting carrier in accord with the time periods set forth in § 30.4(b).

[78 FR 16378, Mar. 14, 2013, as amended at 82 FR 18391, Apr. 19, 2017; 82 FR 43843, Sept. 20, 2017]

§ 30.9 Transmitting and correcting Electronic Export Information.

(a) The USPPI or the authorized filing agent is responsible for electronically transmitting accurate EEI as known at the time of filing in the AES and transmitting any changes to that information as soon as they are known. Corrections, cancellations, or amendments to that information shall be electronically identified and transmitted to the AES for all required fields as soon as possible. The provisions of this paragraph relating to the reporting of corrections, cancellations, or amendments to EEI, shall not be construed as a relaxation of the requirements of the rules and regulations pertaining to the preparation and filing of EEI. Failure to correct the EEI is a violation of the provisions of this part.

(b) For shipments where the USPPI or the authorized agent has received an error message from AES, the corrections shall take place as required. Fatal error messages are sent to filers when EEI is not accepted in the AES and update rejected messages are sent when a correction is not accepted in the AES. Fatal errors must be corrected and EEI resubmitted prior to export for shipments filed predeparture and for post-departure shipments but not later than five (5) calendar days after the date of export. Failure to respond to fatal error messages for shipments filed predeparture prior to export of the cargo subjects the principal party or authorized agent to penalties provided for in Subpart H of this part. Failing to transmit corrections to the AES constitutes a violation of the regulations in this part and renders such principal party or authorized agent subject to the penalties provided for in Subpart H of this part. Update rejected messages must be corrected as soon as possible. For EEI that generates a warning message, the correction shall be made within four (4) calendar days of receipt of the original transmission. For EEI that generates a verify message, the correction, when warranted, shall be made within four (4) calendar days of receipt of the message. A compliance alert indicates that the shipment was not reported in accordance with the FTR. The USPPI or the authorized agent is required to review its filing practices and take required corrective actions to conform with export reporting requirements.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16378, Mar. 14, 2013]

§ 30.10 Retention of export information and the authority to require production of documents.

(a) *Retention of export information.* All parties to the export transaction (owners and operators of export carriers, USPPIs, FPPIs and/or authorized agents) shall retain documents pertaining to the export shipment for five years from the date of export. If the Department of State or other regulatory agency has recordkeeping requirements for exports that exceed the retention period specified in this part, then those requirements prevail. The USPPI or the authorized agent of the USPPI or FPPI may request a copy of

the electronic record or submission from the Census Bureau as provided for in Subpart G of this part. The Census Bureau's retention and maintenance of AES records does not relieve filers from requirements in §30.10.

(b) *Authority to require production of documents.* For purposes of verifying the completeness and accuracy of information reported as required under §30.6, and for other purposes under the regulations in this part, all parties to the export transaction (owners and operators of the exporting carriers, USPPIs, FPPIs, and/or authorized agents) shall provide upon request to the Census Bureau, CBP, ICE, BIS and other participating agencies EEI, shipping documents, invoices, orders, packing lists, and correspondence as well as any other relevant information bearing upon a specific export transaction at anytime within the five year time period.

NOTE TO §30.10: Section 1252(b)(2) of Public Law 106–113, Proliferation Prevention Enhancement Act of 1999, required the Department of Commerce to print and maintain on file a paper copy or other acceptable back-up record of the individual's submission at a location selected by the Secretary of Commerce. The Census Bureau will maintain a data base of EEI filed in AES to ensure that requirements of Public Law 106–113 are met and that all filers can obtain a validated record of their submissions.

[73 FR 31555, June 2, 2008, as amended at 82 FR 18391, Apr. 19, 2017]

§§ 30.11–30.14 [Reserved]

Subpart B—Export Control and Licensing Requirements

§30.15 Introduction.

(a) For export shipments to foreign countries, the EEI is used both for statistical and for export control purposes. All parties to an export transaction must comply with all relevant export control regulations, as well as the requirements of the statistical regulations of this part. For convenience, references to provisions of the EAR, ITAR, CBP, and OFAC regulations that affect the statistical reporting requirements of this part have been incorporated into this part. For regulations and information concerning other agencies that exercise export control and licensing authority for particular types of commodity shipments, a USPPI, its authorized agent, or other party to the transaction shall consult the appropriate agency regulations.

(b) In addition to the reporting requirements set forth in §30.6, further information may be required for export control purposes by the regulations of CBP, BIS, State Department, or the U.S. Postal Service under particular circumstances.

(c) This part requires the retention of documents or records pertaining to a shipment for five years from the date of export. All records concerning license exceptions or license exemptions shall be retained in the format (including electronic or hard copy) required by the controlling agency's regulations. For information on recordkeeping retention requirements exceeding the requirements of this part, refer to the regulations of the agency exercising export control authority for the specific shipment.

(d) In accordance with the provisions of Subpart G of this part, information from the EEI is used solely for official purposes, as authorized by the Secretary of Commerce, and any unauthorized use is not permitted.

§30.16 Export Administration Regulations.

The Export Administration Regulations (EAR) issued by the U.S. Department of Commerce, BIS, contain additional reporting requirements pertaining to EEI (see 15 CFR parts 730–774).

(a) The EAR requires that export information be filed for shipments from U.S. Possessions to foreign countries or areas. (see 15 CFR 758.1(b) and 772.1, definition of the United States.)

(b) Requirements to place certain export control information in the EEI are found in the EAR. (See 15 CFR 758.1(g) and 15 CFR 758.2).

(c) Requirements to place certain export control information on export control documents for shipments exempt from AES filing requirements. (See 15 CFR 758.1(d)).

(d) A shipment destined for a country listed in Country Group E:1 or E:2 as set forth in Supplement No. 1 to 15 CFR part 740 shall require EEI filings

regardless of value unless such shipment is eligible for an exemption in §30.37(y) and does not require a license by BIS or any other Federal Government Agency.

(e) Goods licensed by BIS where the country of ultimate destination is the United States or goods destined to international waters where the person(s) or entity assuming control of the item(s) is a citizen or permanent resident alien of the United States or a juridical entity organized under the laws of the United States or a jurisdiction within the United States shall be excluded from EEI filing.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16379, Mar. 14, 2013; 82 FR 18391, Apr. 19, 2017]

§30.17 Customs and Border Protection regulations.

Refer to the DHS's CBP regulations, 19 CFR 192, for information referencing the advanced electronic submission of cargo information on exports for screening and targeting purposes pursuant to the Trade Act of 2002. The regulations also prohibit postdeparture filing of export information for certain shipments, and contain other regulatory provisions affecting the reporting of EEI. CBP's regulations can be obtained from the U.S. Government Printing Office's Web site at *www.gpoaccess.gov*.

§30.18 Department of State regulations.

(a) The USPPI or the authorized agent shall file export information, as required, for items on the USML of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121). Information for items identified on the USML, including those exported under an export license or license exemption, shall be filed prior to export. Items identified on the USML, including those exported under an export license or license exemption, ultimately destined to a location in the United States are not required to be reported in the AES.

(b) Refer to the ITAR 22 CFR 120–130 for requirements regarding information required for electronically reporting export information for USML shipments and filing time requirements.

(c) Department of State regulations can be found at *http://www.state.gov*.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16379, Mar. 14, 2013]

§30.19 Other Federal agency regulations.

Other Federal agencies have requirements regarding the reporting of certain types of export transactions. The USPPIs and/or authorized agents are responsible for adhering to these requirements.

§§30.20–30.24 [Reserved]

Subpart C—Special Provisions and Specific-Type Transactions

§30.25 Values for certain types of transactions.

Special procedures 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 to the USPPI for the exportation of agricultural commodities under a program of the Department of Agriculture, the value required to be reported for EEI is the selling price paid by the foreign buyer minus the subsidy.

(b) *General Services Administration (GSA) exports of excess personal property.* For exports of GSA excess personal property, the value to be shown in the EEI will be ''fair market value,'' plus charges when applicable, at which the property was transferred to GSA by the holding agency. These charges include packing, rehabilitation, inland freight, or drayage. The estimated ''fair market value'' may be zero, or it may be a percentage of the original or estimated acquisition costs. (Bill of lading, air waybill, and other commercial loading documents for such shipments will bear the notation ''Excess Personal Property, GSA Regulations 1–III, 303.03.'')

(c) *Goods rejected after entry.* For imported goods that are cleared by CBP but subsequently rejected, an EEI must be filed to export the goods. The value to be reported in the AES is the declared import value of the goods.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16379, Mar. 14, 2013]

§ 30.26 Reporting of vessels, aircraft, cargo vans, and other carriers and containers.

(a) Export information shall be filed in the AES for all vessels, locomotives, aircraft, rail cars, trucks, other vehicles, trailers, pallets, cargo vans, lift vans, or similar shipping containers when these items are moving as goods pursuant to sale or other transfer from ownership in the United States to ownership abroad. If the vessel, car, aircraft, locomotive, rail car, vehicle, or shipping container is outside Customs territory of the United States at the time of sale or transfer to foreign ownership, EEI shall be reported identifying the last port of clearance or departure from the United States prior to sale or transfer. The date of export shall be the date of sale.

(b) The country of destination to be shown in the EEI 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 in the EEI unless such country is the country of new ownership.

[78 FR 16379, Mar. 14, 2013]

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

When goods reported as exported from the United States are not exported or are returned without having been entered into a foreign destination, the filer shall cancel the EEI.

§ 30.28 Split shipments.

A split shipment is a shipment covered by a single EEI record booked for export on one conveyance that is divided for shipment on more than one conveyance by the exporting carrier prior to export. The exporting carrier must file the manifest in accordance with CBP regulations indicating that the cargo was sent on two or more of the same type of conveyance of the same carrier leaving from the same port of export within 24 hours by vessel or 7 days by air, truck, or rail. For the succeeding parts of the shipment that are exported within the time frames specified above, a new EEI record will not be required. However, for the succeeding parts of the shipment that are not exported within the time frames specified above, a new EEI record must be filed and amendments must be made to the original EEI record. If a new EEI record is required, the original ITN data element may be used. The following procedures apply for split shipments:

(a) The carrier shall submit the manifest to the CBP Port Director with the manifest covering the conveyance on which the first part of the split shipment is exported and shall make no changes to the EEI. However, the manifest shall show in the ''number of packages'' column the actual portion of the declared total quantity being carried and shall carry a notation to indicate ''Split Shipment'' e.g., ''3 of 10—Split Shipment.'' All associated manifests with the notation ''Split Shipment'' will have identical ITNs if exported within 24 hours by vessel or 7 days by air, truck, or rail.

(b) On each subsequent manifest covering a conveyance on which any part of a split shipment is exported, a prominent notation ''SPLIT SHIPMENT'', e.g. ''4 of 10—Split shipment'' shall be made on the manifest for identification. On the last shipment, the notation shall read ''SPLIT SHIPMENT, FINAL, e.g., ''10 of 10 Split Shipment, Final''.'' Each subsequent manifest covering a part of a split shipment shall also show in the ''number of packages'' column only the goods carried on that particular conveyance and a reference to the total number originally declared for export (for example, 5 of 11, or 5/11). Immediately following the line showing the portion of the split shipment carried on that conveyance, a notation will be made showing the bill of lading number, air waybill number, or other commercial loading documents shown in the original EEI and the portions of the originally declared total carried on each previous conveyance, together with the number and date of each such previous conveyance.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16379, Mar. 14, 2013; 82 FR 18391, Apr. 19, 2017]

§ 30.29 Reporting of repairs and replacements.

These guidelines will govern the reporting of the following:

(a) The return of goods previously imported only for repair and alteration.

(1) The return of goods not licensed by a U.S. Government agency and not subject to the ITAR, temporarily imported for repair and alternation, and declared as such on importation shall have Schedule B number 9801.10.0000. The value shall only include parts and labor. The value of the original product shall not be included. If the value of the parts and labor is over $2,500, then EEI must be filed.

(2) The return of goods licensed by a U.S. Government agency or subject to the ITAR, temporarily imported for repair or alteration, and declared as such on importation shall have Schedule B number 9801.10.0000. In the value field, report the value of the parts and labor. In the license value field, report the value designated on the export license that corresponds to the commodity being exported if required by the licensing agency. EEI must be filed regardless of value.

(b) *Goods that are covered under warranty.* (1) Goods that are reexported after repair under warranty shall follow the procedures in paragraph (a)(1) or (2) of this section as appropriate. It is recommended that the bill of lading, air waybill, or other loading documents include the statement, ''This product was repaired under warranty.''

(2) Goods that are replaced under warranty at no charge to the customer shall include the statement, ''Product replaced under warranty, value for EEI purposes'' on the bill of lading, air waybill, or other commercial loading documents. Place the notation below the proof of filing citation, postdeparture filing citation, AES downtime filing citation, exemption or exclusion legend on the commercial loading documents. Report the Schedule B number or Harmonized Tariff Schedule of the United States Annotated (HTSUSA) commodity classification number of the replacement parts. For goods not licensed by a U.S. Government agency, report the value of the replacement parts in accordance with § 30.6(a)(17). For goods licensed by a U.S. Government agency, report the value and license value in accordance with § 30.6(a)(17) and § 30.6(b)(15) respectively.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16380, Mar. 14, 2013; 82 FR 18391, Apr. 19, 2017]

§§ 30.30–30.34 [Reserved]

Subpart D—Exemptions From the Requirements for the Filing of Electronic Export Information

§ 30.35 Procedure for shipments exempt from filing requirements.

Except as noted in § 30.2(a)(1)(iv), where an exemption from the filing requirement is provided in this subpart, a legend describing the basis for the exemption shall be made on the first page of the bill of lading, air waybill, or other commercial loading document, and on the carrier's outbound manifest. The exemption legend shall reference the number of the section or provision in this part where the particular exemption is provided (see appendix B of this part).

[82 FR 43843, Sept. 20, 2017]

§ 30.36 Exemption for shipments destined to Canada.

(a) Except as noted in § 30.2(a)(1)(iv), and in paragraph (b) of this section, shipments originating in the United States where the country of ultimate destination is Canada are exempt from the EEI reporting requirements of this part.

(b) This exemption does not apply to the following types of export shipments (These shipments shall be reported in the same manner as for all other exports, except household goods, which require limited reporting):

(1) Sent for storage in Canada, but ultimately destined for third countries.

(2) Exports moving from the United States through Canada to a third destination.

(3) Requiring a Department of State, DDTC, export license under the ITAR (22 CFR 120–130).

(4) Requiring a Department of Commerce, Bureau of Industry and Security, license or requiring reporting

under the Export Administration Regulations (15 CFR 758.1(b)).

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

(6) Classified as rough diamonds under the 6-digit HS subheadings (7102.10, 7102.21, or 7102.31).

(7) Used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations, regardless of value or country of destination.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16380, Mar. 14, 2013; 82 FR 18391, Apr. 19, 2017]

§ 30.37 Miscellaneous exemptions.

Except as noted in § 30.2(a)(1)(iv), filing EEI is not required for the following kinds of shipments. However, the Census Bureau has the authority to periodically require the reporting of shipments that are normally exempt from filing.

(a) Exports of commodities where the value of the commodities shipped from one USPPI to one consignee on a single exporting conveyance, classified under an individual Schedule B number or HTSUSA commodity classification code is $2,500 or less. This exemption applies to individual Schedule B numbers or HTSUSA commodity classification codes regardless of the total shipment value. In instances where a shipment contains a mixture of individual Schedule B numbers or HTSUSA commodity classification codes valued at $2,500 or less and individual Schedule B numbers or HTSUSA commodity classification codes valued over $2,500, only those Schedule B numbers or HTSUSA commodity classification codes valued over $2,500 are required to be reported. If the filer reports multiple items of the same Schedule B number or HTSUSA commodity classification code, this exemption only applies if the total value of exports for the Schedule B number or HTSUSA commodity classification code is $2,500 or less. Items of domestic and foreign origin under the same commodity classification number must be reported separately and EEI filing is required when either is over $2,500. For the reporting of household goods see § 30.38. NOTE: this exemption does not apply to the export of vehicles. The export information for vehicles must be filed in AES regardless of value or country of destination.

(b) Tools of trade and their containers that are usual and reasonable kinds and quantities of commodities and software intended for use by individual USPPIs or by employees or representatives of the exporting company in furthering the enterprises and undertakings of the USPPI abroad. Commodities and software eligible for this exemption are those that do not require an export license or that are exported as tools of the trade under a license exception of the EAR (15 CFR 740.9), and are subject to the following provisions:

(1) Are owned by the individual USPPI or exporting company.

(2) Accompany the individual USPPI, employee, or representative of the exporting company.

(3) Are necessary and appropriate and intended for the personal and/or business use of the individual USPPI, employee, or representative of the company or business.

(4) Are not for sale.

(5) Are returned to the United States no later than one (1) year from the date of export.

(6) Are not shipped under a bill of lading or an air waybill.

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

(d) Shipments from one point in Canada or Mexico to another point in the same country by routes through the United States.

(e) [Reserved]

(f) Exports of technology and software as defined in 15 CFR 772 of the EAR that do not require an export license are exempt from filing requirements. However, EEI is required for mass-market software. For purposes of this part, 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.

(g) Shipments of books, maps, charts, pamphlets, and similar articles to foreign libraries, government establishments, or similar institutions.

(h) Shipments as authorized under License Exception GFT for gift parcels and humanitarian donations (15 CFR 740.12(a) and (b)).

(i) Diplomatic pouches and their contents.

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

(k) 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. This excludes highly technical plans, correspondence, etc. that could be licensed.

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

(m) Carriers' stores, not shipped under a bill of lading or an air waybill (including goods 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 unlading 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 unlading in a foreign country. Hay, straw, feed, and other appurtenances necessary to the care and feeding of livestock while en route to a foreign destination are considered part of carriers' stores of carrying vessels, trains, planes, etc.

(n) Dunnage, not shipped under a bill of lading or an air waybill, 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 unlading in a foreign country.

(o) Shipments of aircraft parts and equipment; food, saloon, slop chest, and related stores; and provisions and supplies for use on aircraft by a U.S. airline to its own installations, aircraft, and agents abroad, under EAR License Exception AVS for aircraft and vessels (see 15 CFR 740.15(c)).

(p) Filing EEI is not required for the following types of commodities when they are not shipped as cargo under a bill of lading or an air waybill and do not require an export license, but the USPPI shall be prepared to make an oral declaration to CBP Port Director, when required: baggage and personal effects, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.

(q) Temporary exports, except those that require licensing, whether shipped or hand carried, (e.g., carnet) that are exported from and returned to the United States in less than one year (12 months) from the date of export.

(r) Goods previously imported under a Temporary Import Bond for return in the same condition as when imported including: Goods for testing, experimentation, or demonstration; goods imported for exhibition; samples and models imported for review or for taking orders; goods imported for participation in races or contests, and animals imported for breeding or exhibition; and goods imported for use by representatives of foreign governments or international organizations or by members of the armed forces of a foreign country. Goods that were imported under bond for processing and reexportation are not covered by this exemption.

(s) Issued banknotes and securities, and coins in circulation exported as evidence of financial claims. The EEI must be filed for unissued bank notes and securities and coins not in circulation (such as banknotes printed in the United States and exported in fulfillment of the printing contract, or as parts of collections), which should be reported at their commercial or current value.

(t) Documents used in international transactions, documents moving out of the United States to facilitate international transactions including airline tickets, internal revenue stamps, liquor stamps, and advertising literature. Exports of such documents in fulfillment of a contract for their production, however, are not exempt and must be reported at the transaction value for their production.

(u) [Reserved]

(v) Vessels, locomotives, aircraft, rail cars, trucks, other vehicles, trailers, pallets, cargo vans, lift vans, or similar shipping containers not considered ''shipped'' in terms of the regulations in this part, when they are moving, either loaded or empty, without transfer of ownership or title, in their capacity as carriers of goods or as instruments of such carriers.

(w) Shipments to Army Post Office, Diplomatic Post Office, Fleet Post Office.

(x) Shipments exported under license exception Baggage (BAG) (15 CFR 740.14).

(y) The following types of shipments destined for a country listed in Country Group E:1 or E:2 as set forth in Supplement No. 1 to 15 CFR part 740 are not required to be filed in the AES:

(1) Shipments of published books, software, maps, charts, pamphlets, or any other similar media available for general distribution, as described in 15 CFR 734.7 to foreign libraries, or similar institutions.

(2) Shipments to U.S. government agencies and employees that are lawfully exported under License Exception GOV (15 CFR 740.11(b)(2)(i) or (ii)) valued at $2500 or less per Schedule B Number.

(3) Personal effects as described in 15 CFR 740.14(b)(1) being lawfully exported under License Exception BAG (15 CFR 740.14).

(4) Individual gift parcels and humanitarian donations being lawfully exported under License Exception GFT (15 CFR 740.12(a) and (b)).

(5) Vessels and aircraft lawfully leaving the United States for temporary sojourn to or in a Country Group E:1 or E:2 country under License Exception AVS (15 CFR 740.15).

(6) Tools of trade that will be used by a person traveling to a Country Group E:1 or E:2 destination, that will be returned to the United States within one year and that are lawfully being exported to a Country Group E:1 or E:2 destination under License Exception BAG (15 CFR 740.14) or License Exception TMP (15 CFR 740.9(a)).

[73 FR 31555, June 2, 2008, as amended at 78 FR 16380, Mar. 14, 2013; 79 FR 54589, Sept. 12, 2014; 82 FR 18392, Apr. 19, 2017; 88 FR 54326, Aug. 10, 2023]

§ 30.38 Exemption from the requirements for reporting complete commodity information.

Except as noted in § 30.2(a)(1)(iv), report EEI for household goods. Household goods are usual and reasonable kinds and quantities of personal property necessary and appropriate for use by the USPPI in the USPPI's dwelling in a foreign country. Household goods include, but are not limited to items such as furniture, large and small appliances, kitchenware, electronics, toys, bicycles, clothing, personal adornments, and associated containers. These goods should be for use by the USPPI, not intended for sale; and shipped under a bill of lading or an air waybill. In such cases, Schedule B or HTSUSA commodity classification codes and domestic/foreign indicator shall not be required.

[78 FR 16381, Mar. 14, 2013]

§ 30.39 Special exemptions for shipments to the U.S. Armed Services.

Except as noted in § 30.2 (a)(1)(iv), filing of EEI is not required for any and 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 articles that are on the USML and thus controlled by the ITAR and/or shipments that are not consigned to the U.S. Armed Services, regardless of whether they may be for their ultimate and exclusive use.

[78 FR 16381, Mar. 14, 2013]

§ 30.40 Special exemptions for certain shipments to U.S. government agencies and employees.

Except as noted in § 30.2(a)(1)(iv), filing EEI is 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 cooperatives or other associations for subsequent sale or other distribution to such employees.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16381, Mar. 14, 2013]

§§ 30.41–30.44 [Reserved]

Subpart E—Manifest Requirements

§ 30.45 Manifest requirements

(a) File the manifest in accordance with Customs and Border Protections (CBP) regulations.

(1) *Vessels.* Vessels transporting goods as specified shall file a complete manifest, or electronic equivalent.

(i) *Bunker fuel.* The manifest (including vessels taking bunker fuel to be laden aboard vessels on the high seas) clearing for foreign countries shall show the 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 (1000 kgs or 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)–(3) [Reserved]

(4) *Carriers not required to file manifests.* Carriers allowed to file incomplete manifests under applicable CBP regulations are required, upon request, to present to the CBP Port Director the proof of filing citation, exemption or exclusion legends for each shipment, prior to departure of the vessel, aircraft, train, truck or other means of conveyance.

(5) *Penalties.* Failure of the carrier to file a manifest as required constitutes a violation of the regulations in this part and renders such carrier subject to the penalties provided for in Subpart H of this part.

(b) *Exempt items.* For any item for which EEI is not required by the regulations in this part, a notation on the manifest shall be made by the carrier as to the basis for the exemption. In cases where a manifest is not required and EEI is not required, an oral declaration to the CBP Port Director shall be made as to the basis for the exemption.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16381, Mar. 14, 2013; 82 FR 18392, Apr. 19, 2017]

§§ 30.46–30.49 [Reserved]

Subpart F—Import Requirements

§ 30.50 General requirements for filing import entries.

Electronic entry summary filing through the Automated Commercial Environment (ACE), paper import entry summaries (CBP–7501), or paper record of vessel foreign repair or equipment purchase (CBP–226) shall be completed by the importer of record or its licensed customs broker and filed directly with CBP in accordance with 19 CFR parts 1–199. Information on all mail and informal entries required for statistical and CBP purposes shall be reported, including value not subject to duty. Upon request, the importer of record or the importer's licensed customs broker shall provide the Census Bureau with information or documentation necessary to verify the accuracy of the reported information, or to resolve problems regarding the reported import transaction received by the Census Bureau.

(a) Import information for statistical purposes shall be filed for goods shipped as follows:

(1) Entering the United States from foreign countries.

(2) Admitted to U.S. FTZs.
(3) From the U.S. Virgin Islands.
(4) From other nonforeign areas (except Puerto Rico).
(b) Sources for collecting import statistics include the following:
(1) CBP's ABI Program (see 19 CFR Subpart A, Part 143).
(2) CBP–7501 paper entry summaries required for individual transactions (see 19 CFR Subpart B, Part 142).
(3) CBP–226, Record of Vessel Foreign Repair or Equipment Purchase (see 19 CFR 4.7 and 4.14).
(4) CBP–214, Application for Foreign Trade Zone Admission and/or Status Designation (Statistical copy).
(5) Electronic CBP Form 214 Admissions (e214).
(c) The Kimberley Process Certificate (KPC) for all imports of rough diamonds classified under HS subheadings 7102.10, 7102.21, 7102.31 must be faxed by the importer or customs broker to the Census Bureau on (800) 457–7328, or provided by other methods as permitted by the Census Bureau, immediately after entry of the shipment in the United States.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16382, Mar. 14, 2013; 82 FR 18392, Apr. 19, 2017; 83 FR 17751, Apr. 24, 2018]

§ 30.51 Statistical information required for import entries.

The information required for statistical purposes is, in most cases, also required by CBP regulations for other purposes. Refer to CBP Web site at *http://www.cbp.gov* to download ''Instructions for Preparation of CBP–7501,'' for completing the paper entry summary documentation (CBP–7501). Refer to the Customs and Trade Automated Interface Requirements for instructions on submitting an ABI electronic record, or instructions for completing CBP–226 for declaring any equipment, repair parts, materials purchased, or expense for repairs incurred outside of the United States.

§ 30.52 Foreign Trade Zones (FTZ).

When goods are withdrawn from a FTZ for export to a foreign country, the export shall be reported in accordance with § 30.2. Foreign goods admitted into FTZs shall be reported as a general import. Statistical requirements for zone admissions are provided to the Census Bureau via CBP's Automated Broker Interface (ABI) electronic 214 (e214) program or the CBP Form 214A Application for Foreign Trade Zone Admission and/or Status Designation. Refer to CBP Web site at *www.cbp.gov* to download the ''Foreign Trade Zone Manual'' where instructions for completing the paper CBP Form 214A documents are provided in Appendix C. When goods are withdrawn for domestic consumption or entry into a bonded warehouse, the withdrawal shall be reported on CBP 7501 or through the ABI in accordance with CBP regulations. The instructions and definitions for completing the e214 are provided in 19 CFR 146. The following data items are required to be filed on the 214A, for statistical purposes:

(a) Zone Number and Location (Address)
(b) Port Code
(c) Importing Vessel and Flag/Other Carrier
(d) Export Date
(e) Import Date
(f) Zone Admission Number
(g) U.S. Port of Unlading
(h) In-bond Carrier
(i) Foreign Port of Lading
(j) Bill of Lading/AWB Number
(k) Number of Packages & Country of Origin
(l) Description of Merchandise
(m) HTSUSA Number
(n) Quantity (HTSUSA)
(o) Gross Weight
(p) Separate Value and Aggregate Charges
(q) Status Designation

[78 FR 16382, Mar. 14, 2014]

§ 30.53 Import of goods returned for repair.

Import entries covering U.S. goods imported temporarily to be repaired, altered, or processed under Harmonized Tariff Schedule of the United States Annotated (HTSUSA) commodity classification code 9801.00.1012, and foreign goods imported temporarily to be repaired or altered under the HTSUSA commodity classification code 9813.00.0540 are required to show the following statement: ''Imported for Repair and Reexport'' on CBP Form 7501 or its electronic equivalent. When the

goods are subsequently exported, file according to the instructions provided in § 30.29.

[82 FR 18392, Apr. 19, 2017]

§ 30.54 Special provisions for imports from Canada.

(a) When certain softwood lumber products described under HTSUSA subheadings 4407.1001, 4409.1010, 4409.1090, and 4409.1020 are imported from Canada, import entry records are required to show a valid Canadian region of manufacture code. The Canadian region of manufacture is determined on a first mill basis (the point at which the item was first manufactured into a covered lumber product). Canadian region of manufacture is the first region where the subject goods underwent a change in tariff classification to the tariff classes cited in this paragraph. The Canadian region code should be transmitted in the electronic ABI summaries. The Canadian region of manufacture code should replace the region of origin code on CBP–7501, entry summary form. These requirements apply only for imports of certain softwood lumber products for which the region 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 U.S. 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 region 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 region 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 region in which the goods were manufactured, assembled, 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 region of origin code replaces the country of origin code on CBP Form 7501, entry summary form.

(c) All electronic ABI entry summaries for imports originating in Canada also require the Canadian region of origin code to be transmitted for each entry summary line item.

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

XA—Alberta
XB—New Brunswick
XD—British Columbia Coastal
XE—British Columbia Interior
XM—Manitoba
XN—Nova Scotia
XO—Ontario
XP—Prince Edward Island
XQ—Quebec
XS—Saskatchewan
XT—Northwest Territories
XV—Nunavut
XW—Newfoundland
XY—Yukon

[73 FR 31555, June 2, 2008, as amended at 78 FR 16382, Mar. 14, 2013]

§ 30.55 Confidential information, import entries, and withdrawals.

The contents of the statistical copies of import entries and withdrawals on file with the Census Bureau are treated as confidential and will not be released without authorization by CBP, in accordance with 19 CFR part 103 relating to the copies on file in CBP offices. The importer or import broker must provide the Census Bureau with information or documentation necessary to verify the accuracy or resolve problems regarding the reported import transaction.

(a) The basic responsibility for obtaining and providing the information required by the general statistical headnotes of the HTSUSA rests with the person filing the import entry. This is provided for in section 484(a) of the Tariff Act, 19 CFR 141.61(e) of CBP regulations, and § 30.50 of this subpart. CBP Regulations 19 CFR 141.61(a) specify that the entry summary data clearly set forth all information required.

(b) 19 CFR 141.61(e) of CBP regulations provides that penalty procedures relating to erroneous statistical information shall not be invoked against any person who attempts to comply with the statistical requirements of the General Statistical Notes of the HTSUSA. However, in those instances where there is evidence that statistical suffixes are misstated to avoid quota action, or a misstatement of facts is made to avoid import controls or restrictions related to specific commodities, the importer or its licensed broker should be aware that the appropriate actions will be taken under 19 U.S.C. 1592, as amended.

[73 FR 31555, June 2, 2008, as amended at 88 FR 54326, Aug. 10, 2023]

§§ 30.56–30.59 [Reserved]

Subpart G—General Administrative Provisions

§ 30.60 Confidentiality of Electronic Export Information.

(a) The Electronic Export Information (EEI) collected and accessed by the Census Bureau under 15 CFR Part 30 is confidential, to be used solely for official purposes as authorized by the Secretary of Commerce. The collection of EEI by the Department of Commerce has been approved by the Office of Management and Budget (OMB). The information collected is used by the Census Bureau for statistical purposes. In addition, EEI is used by federal government agencies, such as the Department of State, Immigration and Customs Enforcement, and Customs and Border Protection (CBP) for export control; by other federal government agencies such as the Bureau of Economic Analysis, Bureau of Labor Statistics, and Bureau of Transportation Statistics for statistical purposes; and by other federal agencies as authorized by the Secretary of Commerce or the Census Bureau Director consistent with the agencies' statutory or legal authorities as provided for in paragraph (e) of this section. Absent such authorization, information collected pursuant to this Part shall not be disclosed to anyone by any officer, employee, contractor, agent of the federal government or other parties with access to the EEI other than to the USPPI or the authorized agent of the USPPI. Such disclosure shall be limited to that information provided by each party pursuant to this Part.

(b) *Viewing and using EEI for official purposes.* (1) The EEI may be viewed and used by federal agencies authorized to use export data for official purposes as defined to include, but not limited to:

(i) Improving compliance with U.S. export laws and regulations;

(ii) Detecting and preventing violations of export, census, customs, homeland security, national resource and other laws, regulations and treaties;

(iii) Analysis to assess threats to U.S. and international security such as money laundering, and other potential violations of U.S. and foreign criminal laws;

(iv) Enforcement of U.S. export-related laws and regulations;

(v) Investigation and prosecution of possible violations of U.S. export-related laws and regulations;

(vi) Proof of export for enforcement of laws relating to exemption from or refund, drawback or other return of taxes, duties, fees or other charges;

(vii) Analyzing the impact of proposed and implemented trade agreeements and fulfilling U.S. obligations under such agreements; and

(viii) Preparation of statistics.

(2) The Census Bureau may provide the EEI to the USPPI or authorized agent, for compliance and audit purposes. Such disclosure shall be limited to that information provided to the AES by the USPPI or the authorized agent.

(c) *Supplying EEI for nonofficial purposes.* The official report of the EEI submitted to the U.S. government shall not be disclosed by the USPPI, the authorized agent, or representative of the USPPI for ''nonofficial purposes,'' either in whole or in part, or in any form including but not limited to electronic transmission, paper printout, or certified reproduction. ''Nonofficial purposes'' are defined to include but not limited to providing the official EEI:

(1) In support of claims for exemption from Federal or state taxation, except as related to paragraph (b)(1)(vi) of this section;

(2) To the U.S. Internal Revenue Service for purposes not related to export control or compliance;

(3) To state and local government agencies, and nongovernmental entities or individuals for any purpose; and

(4) To foreign entities or foreign governments for any purpose.

(d) Ocean manifest data can be made public under provision of CBP regulations. For information appearing on the outward manifest, 19 CFR 103.31 allows a shipper (or their authorized employee or official) to submit a certification for confidential treatment of the shipper's name and address.

(e) *Determination by the Secretary of Commerce.* Under 13 U.S.C. 301(g), the EEI collected and accessed by the Census Bureau is exempt from public disclosure unless the Secretary or delegate determines that such exemption would be contrary to the national interest. The Secretary or delegate may make such information available, if he or she determines it is in the national interest, taking such safeguards and precautions to limit dissemination as deemed appropriate under the circumstances. In determining whether it is contrary to the national interest to apply the exemption, the maintenance of confidentiality and national security shall be considered as important elements of national interest. The unauthorized disclosure of confidential EEI granted under a National Interest Determination renders such persons subject to the civil penalties provided for in Subpart H of this part.

(f) *Penalties.* Disclosure of confidential EEI by any officer, employee, contractor, or agent of the federal government, except as provided for in paragraphs (b) and (e) of this section renders such persons subject to the civil penalties.

NOTE TO § 30.60: Kimberley Process Certificates (KPCs), including voided KPCs, provided to the Census Bureau pursuant to the Clean Diamond Trade Act, Executive Order 13312, and this part are not considered EEI and are not confidential under Title 13. KPCs and voided KPCs may be protected from public disclosure by the Privacy Act or other applicable nondisclosure statutes.

[79 FR 49660, Aug. 22, 2014, as amended at 83 FR 17751, Apr. 24, 2018]

§ 30.61 Statistical classification schedules.

The following statistical classification schedules are referenced in this part. These schedules, may be accessed through the Census Bureau's Web site at *http://www.census.gov/trade*.

(a) *Schedule B—Statistical Classification for Domestic and Foreign Commodities Exported from the United States*, shows the detailed commodity classification requirements and 10-digit statistical reporting numbers to be used in preparing EEI, as required by these regulations.

(b) *Harmonized Tariff Schedules of the United States Annotated for Statistical Reporting*, shows the 10-digit statistical reporting number to be used in preparing import entries and withdrawal forms.

(c) *Schedule C*—Classification of Country and Territory Designations for U.S. Foreign Trade Statistics.

(d) *Schedule D*—Classification of CBP Districts and Ports.

(e) *Schedule K*—Classification of Foreign Ports by Geographic Trade Area and Country.

(f) *International Air Transport Association (IATA)*—Code of the carrier for air shipments. These are the air carrier codes to be used in reporting EEI, as required by the regulations in this part.

(g) *Standard Carrier Alpha Code (SCAC)*—Classification of the carrier for vessel, rail and truck shipments, showing the carrier codes necessary to prepare EEI, as required by the regulations in this part.

§ 30.62 Emergency exceptions.

The Census Bureau and CBP may jointly authorize the postponement of or exception to the requirements of the regulations in this Part as warranted by the circumstances in individual cases of emergency where strict enforcement of the regulations would create a hardship. In cases where export control requirements also are involved, the concurrence of the regulatory agency and CBP also will be obtained.

§ 30.63 Office of Management and Budget control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart will comply with the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3507(f), 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 30.99	0607–0152

§§ 30.64–30.69 [Reserved]

Subpart H—Penalties

§ 30.70 Violation of the Clean Diamond Trade Act.

Section 8(c) of the Clean Diamond Trade Act (CDTA) authorizes U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) to enforce the laws and regulations governing exports of rough diamonds. The Treasury Department's Office of Foreign Assets Control (OFAC) also has enforcement authority pursuant to section 5(a) of the CDTA, Executive Order 13312, and Rough Diamonds Control Regulations (31 CFR part 592). CBP, ICE, and OFAC are authorized to enforce provisions of the CDTA providing the following civil and criminal penalties:

(a) *Civil penalties.* 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.

(b) *Criminal penalties.* For the willful violation or attempted violation of any license, order, or regulation issued under the Act, a fine not to exceed $50,000, shall be imposed upon conviction or:

(1) If a natural person, imprisoned for not more than ten years, or both;

(2) If an officer, director, or agent of any corporation, who willfully participates in such violation, imprisoned for not more than ten years, or both.

[73 FR 31555, June 2, 2008, as amended at 83 FR 17751, Apr. 24, 2018]

§ 30.71 False or fraudulent reporting on or misuse of the Automated Export System.

(a) *Criminal penalties*—(1) *Failure to file; submission of false or misleading information.* Any person, including USPPIs, authorized agents or carriers, who knowingly fails to file or knowingly submits, directly or indirectly, to the U.S. Government, false or misleading export information through the AES, shall be subject to a fine not to exceed $10,000 or imprisonment for not more than five years, or both, for each violation.

(2) *Furtherance of illegal activities.* Any person, including USPPIs, authorized agents or carriers, who knowingly reports, directly or indirectly, to the U.S. Government any information through or otherwise uses the AES to further any illegal activity shall be subject to a fine not to exceed $10,000 or imprisonment for not more than five years, or both, for each violation.

(3) *Forfeiture penalties.* Any person who is convicted under this subpart shall, in addition to any other penalty, be subject to forfeiting to the United States:

(i) Any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation.

(ii) Any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation.

(iii) Any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of this violation.

(4) *Exemption.* The criminal fines provided for in this subpart are exempt from the provisions of 18 U.S.C. 3571.

(b) *Civil penalties*—(1) *Failure to file violations.* A failure to file violation occurs if the government discovers that there is no AES record for an export transaction by the applicable period prescribed in § 30.4 of this part. Any AES record filed later than ten (10) calendar days after the due date will also be considered a failure to file regardless of whether the violation was or was not discovered by the government.

A civil penalty not to exceed $10,000 may be imposed for a failure to file violation.

(2) *Late filing violations.* A late filing violation occurs when an AES record is filed after the applicable period prescribed in § 30.4 of this part. A civil penalty not to exceed $1,100 for each day of delinquency, but not more than $10,000 per violation, may be imposed for failure to file timely export information or reports in connection with the exportation or transportation of cargo. (See 19 CFR part 192)

(3) *Filing false/misleading information, furtherance of illegal activities and penalties for other violations.* A civil penalty not to exceed $10,000 per violation may be imposed for each violation of provisions of this part other than any violation encompassed by paragraph (b)(1) or (b)(2) of this section. Such penalty may be in addition to any other penalty imposed by law.

(4) *Forfeiture penalties.* In addition to any other civil penalties specified in this section, any property involved in a violation may be subject to forfeiture under applicable law.

NOTE 1 TO PARAGRAPH (b): The civil monetary penalties are adjusted for inflation annually based on The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74). In accordance with this Act, as amended, the penalties in title 13, chapter 9, sections 304 and 305(b), United States Code are adjusted and published each year in the FEDERAL REGISTER no later than January 15th.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16382, Mar. 14, 2013; 88 FR 54237, Aug. 10, 2023]

§ 30.72 Civil penalty procedures.

(a) *General.* Whenever a civil penalty is sought for a violation of this part, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Any such hearing shall be conducted in accordance with 5 U.S.C. 556 and 557.

(b) *Applicable law for delegated function.* If, pursuant to 13 U.S.C. 306, the Secretary delegates functions addressed in this part to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of action and compromise of claims shall apply.

(c) *Commencement of civil actions.* If any person fails to pay a civil penalty imposed under this subpart, the Secretary may request the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than five years after the date the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(d) *Remission and mitigation.* Any penalties imposed under § 30.71(b)(1) and (b)(2) may be remitted or mitigated, if:

(1) The penalties were incurred without willful negligence or fraud; or

(2) Other circumstances exist that justify a remission or mitigation.

(e) *Deposit of payments in General Fund of the Treasury.* Any amount paid in satisfaction of a civil penalty imposed under this subpart shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts, other than a payment to remit a forfeiture which shall be deposited into the Treasury Forfeiture fund.

§ 30.73 Enforcement.

(a) *Department of Commerce.* The BIS's OEE may conduct investigations pursuant to this part. In conducting investigations, BIS may, to the extent necessary or appropriate to the enforcement of this part, exercise such authorities as are conferred upon BIS by other laws of the United States, subject, as appropriate, to policies and procedures approved by the Attorney General.

(b) *Department of Homeland Security (DHS).* ICE and CBP may enforce the provisions of this part and ICE, as assisted by CBP may conduct investigations under this part.

§ 30.74 Voluntary self-disclosure.

(a) *General policy*. The Census Bureau strongly encourages disclosure of any violation or suspected violation of the FTR. Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought. The Secretary of Commerce has delegated all enforcement authority under 13 U.S.C. Chapter 9, to the BIS and the DHS.

(b) *Limitations*. (1) The provisions of this section apply only when information is provided to the Census Bureau for its review in determining whether to seek administrative action for violations of the FTR.

(2) The provisions of this section apply only when information is received by the Census Bureau for review prior to the time that the Census Bureau, or any other agency of the United States Government, has learned the same or substantially similar information from another source and has commenced an investigation or inquiry in connection with that information.

(3) While voluntary self-disclosure is a mitigating factor in determining what corrective actions will be required by the Census Bureau and/or whether the violation will be referred to the BIS to determine what administrative sanctions, if any, will be sought, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is within the discretion of the Census Bureau and the BIS, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice (DOJ) for criminal prosecution. In such a case, the BIS or the DHS would notify the DOJ of the voluntary self-disclosure, but the consideration of that factor is within the discretion of the DOJ.

(4) Any person, including USPPIs, authorized agents, or carriers, will not be deemed to have made a voluntary self-disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of senior management.

(5) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Information to be provided*—(1) *General*. Any person disclosing information that constitutes a voluntary self-disclosure should, in the manner outlined below, if a violation is suspected or a violation is discovered, conduct a thorough review of all export transactions for the past five years where violations of the FTR are suspected and notify the Census Bureau as soon as possible.

(2) *Initial notification*. (i) The initial notification must be in writing and be sent to the address in paragraph (c)(5) of this section. The notification must include the name of the person making the disclosure and a brief description of the suspected violations. The notification should describe the general nature, circumstances, and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by paragraph (c)(3) of this section, the disclosure will be deemed to have been made on the date of the initial notification for purposes of paragraph (b)(2) of this section.

(ii) Disclosure of suspected violations that involve export of items controlled, licensed, or otherwise subject to the jurisdiction by a department or agency of the federal government should be made to the appropriate federal department or agency.

(3) *Narrative account*. After the initial notification, a thorough review should be conducted of all export transactions where possible violations of the FTR are suspected. The Census Bureau recommends that the review cover a period of five years prior to the date of the initial notification. If the review goes back less than five years, there is a risk that violations may not be discovered that later could become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the FTR or other provision

of law requires disclosure. Upon completion of the review, the Census Bureau should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

(i) The kind of violation involved, for example, failure to file EEI, failure to correct fatal errors, failure to file timely corrections;

(ii) Describe all data required to be reported under the FTR that was either not reported or reported incorrectly;

(iii) An explanation of when and how the violations occurred;

(iv) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;

(v) A description of any mitigating circumstances;

(vi) Corrective measures taken; and

(vii) ITNs of the missed and/or corrected shipments.

(4) *Electronic export information.* Report all data required under the FTR that was not reported. Report corrections for all data reported incorrectly. All reporting of unreported data or corrections to previously reported data shall be made through the AES.

(5) *Where to make voluntary self-disclosures.* The information constituting a Voluntary Self-Disclosure or any other correspondence pertaining to a Voluntary Self-Disclosure may be submitted to the U.S. Census Bureau, Branch Chief, Trade Regulations Branch by methods permitted by the Census Bureau. See *www.census.gov/trade* for more details.

(d) *Action by the Census Bureau.* After the Census Bureau has been provided with the required narrative, it will promptly notify CBP, ICE, and the OEE of the voluntary disclosure, acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, the Census Bureau may take any of the following actions:

(1) Inform the person or company making the voluntary self-disclosure of the action to be taken.

(2) Issue a warning letter or letter setting forth corrective measures required.

(3) Refer the matter, if necessary, to the OEE for the appropriate action.

[73 FR 31555, June 2, 2008, as amended at 78 FR 16382, Mar. 14, 2013; 82 FR 18392, Apr. 19, 2017; 88 FR 54237, Aug. 10, 2023]

§§ 30.75–30.99 [Reserved]

APPENDIX A TO PART 30—SAMPLE FOR POWER OF ATTORNEY AND WRITTEN AUTHORIZATION

Appendix A to Part 30–Sample for Power of Attorney and Written Authorization
SAMPLE FORMAT: Power of Attorney

POWER OF ATTORNEY
U.S. PRINCIPAL PARTY IN INTEREST/AUTHORIZED AGENT

Know all men by these presents, that_____, the
(Name of U.S. Principal Party in Interest (USPPI))
USPPI organized and doing business under the laws of the State or Country of
_____ and having an office and place of business
at_____hereby
(Address of USPPI)
authorizes_____, (Authorized Agent)
(Name of Authorized Agent)
of_____
(Address of Authorized Agent)
to act for and on its behalf as a true and lawful agent and attorney of the U.S. Principal Party in Interest (USPPI) for, and in the name, place, and stead of the USPPI, from this date, in the United States either in writing, electronically, or by other authorized means to: act as authorized agent for export control, U.S. Census Bureau (Census Bureau) reporting, and U.S. Customs and Border Protection (CBP) purposes. Also, to prepare and transmit any Electronic Export Information (EEI) or other documents or records required to be filed by the Census Bureau, CBP, the Bureau of Industry and Security, or any other U.S. Government agency, and perform any other act that may be required by law or regulation in connection with the exportation or transportation of any goods shipped or consigned by or to the USPPI, and to receive or ship any goods on behalf of the USPPI.

The USPPI hereby certifies that all statements and information contained in the documentation provided to the authorized agent and relating to exportation will be true and correct. Furthermore, the USPPI understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any United States laws or regulations on exportation.

This power of attorney is to remain in full force and effect until revocation in writing is duly given by the U.S. Principal Party in Interest and received by the Authorized Agent.

IN WITNESS WHEREOF, _____ caused these
(Full Name of USPPI/USPPI Company)
presents to be sealed and signed:

Witness: _____ Signature:_____
Capacity: _____
Date:_____

Sample Written Authorization
SAMPLE FORMAT: Written Authorization

WRITTEN AUTHORIZATION TO PREPARE OR TRANSMIT ELECTRONIC EXPORT INFORMATION

I, _____, authorize
(Name of U.S. Principal Party in Interest)
_____ to act as authorized agent for
(Name of Authorized Agent)
export control, U.S. Customs, and Census Bureau purposes to transmit such export information electronically that may be required by law or regulation in connection with the exportation or transportation of any goods on behalf of said U.S. Principal Party in Interest. The U.S. Principal Party in Interest certifies that necessary and proper documentation to accurately transmit the information electronically is and will be provided to the said Authorized Agent. The U.S. Principal Party in Interest further understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any U.S. laws or regulations on exportation and agrees to be bound by all statements of said authorized agent based upon information or documentation provided by the U.S. Principal Party in Interest to said authorized agent.

Signature: _____
(U.S. Principal Party in Interest)
Capacity: _____
Date: _____

APPENDIX B TO PART 30—AES FILING CITATION, EXEMPTION AND EXCLUSION LEGENDS

I. Proof of Filing Citation	AES ITN Example: AES X20170101987654
II. Postdeparture Citation—USPPI, USPPI is filing the EEI.	AESPOST USPPI Identification Number Date of Export (mm/dd/yyyy). Example: AESPOST 12345678912 01/01/2017.
III. Postdeparture Citation—Agent, Agent is filing the EEI.	AESPOST USPPI Identification Number—Filer ID Date of Export (mm/dd/yyyy). Example: AESPOST 12345678912—987654321 01/01/2017.
IV. AES downtime Filing Citation—Use only when AES or AES Direct is unavailable.	AESDOWN Filer ID Date of Export (mm/dd/yyyy) Example: AESDOWN 123456789 01/01/2017
V. Exemption for Shipments to Canada	NOEEI §30.36
VI. Exemption for Low-Value Shipments.	NOEEI §30.37(a)
VII. Miscellaneous Exemption Statements are found in 15 CFR part 30, subpart D, §30.37(b) through (y).	NOEEI §30.37 (site corresponding alphabet)
VIII. Special Exemption for Shipments to the U.S. Armed Forces.	NOEEI §30.39
IX. Special Exemptions for Certain Shipments to U.S. Government Agencies and Employees (Exemption Statements are found in 15 CFR part 30, subpart D, §30.40(a) through (c).	NOEEI §30.40 (site corresponding alphabet)
X. Split Shipments Split Shipments should be referenced as such on the manifest in accordance with provisions contained in §30.28, Split Shipments. The notation should be easily identifiable on the manifest. It is preferable to include a reference to a split shipment in the exemption statements cited in the example, the notation SS should be included at the end of the appropriate exemption statement.	AES ITN SS Example: AES X20170101987654 SS

[82 FR 43844, Sept. 20, 2017, as amended at 88 FR 54237, Aug. 10, 2023]

PART 40—TRAINING OF FOREIGN PARTICIPANTS IN CENSUS PROCEDURES AND GENERAL STATISTICS

Sec.

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

SOURCE: 28 FR 119, Jan. 4, 1963, unless otherwise noted.

§ 40.1 Type of grant.

Training grants will be awarded by the Agency for International Development (AID), in its capacity as the bilateral technical assistance agency for the United States Government, to foreign participants for training, observation, and research in the fields of censuses and statistics at the Bureau of the Census. In compliance with the needs of the participants and consistent with resources of the Bureau, training programs will be developed along the lines of a combined internetraining 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) organization and administration of the United States Bureau of the Census, (2) subject-matter areas for which the Bureau of the Census collects and compiles statistical information, (3) nature and scope of the major statistical programs maintained by other federal government agencies, (4) techniques and scope of the periodic censuses and statistical surveys, and statistical compilations 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 Bureau 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 equipment, and automatic data processing systems for mass processing of statistical data, (5) definitions and scope of the subject matters involved in the censuses and statistical programs of 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.

(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.

(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.

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]

§ 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 prelimary 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.*, 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 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 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 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, municipalities, 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.

§ 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 2010 CENSUS

Sec.

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, and at 73 FR 46553, Aug. 11, 2008.

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

For the tabulation and publication of data from the 2010 Census of Population and Housing, the Bureau of the Census will recognize only those boundaries legally in effect on January 1, 2010 that have been reported officially to the Bureau of the Census no later than March 1, 2010. 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, 2010.

§ 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–12 and A–13 of Appendix A, Census 2000 Geographic Terms and Concepts.

[51 FR 24653, July 8, 1986, as amended at 63 FR 10303, Mar. 3, 1998; 73 FR 46553, Aug. 11, 2008]

§ 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, 2010 in taking the 2010 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 2010 Census as residents of the area in which they resided on January 1, 2010. The Bureau of the Census will not recognize in the data tabulations prepared for the 2010 census changes occurring on or before January 1, 2010, but not submitted officially to the Bureau of the Census until after March 1, 2010 except as necessary to conduct decennial census operations.

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

Sec.

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 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 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 POPULATION ESTIMATES

Sec.

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

SOURCE: 88 FR 17705, Mar. 24, 2023, unless otherwise noted.

§ 90.1 Scope and applicability.

Between decennial censuses, the Census Bureau annually prepares statistical estimates of the number of people

residing in States and their governmental units. In general, these estimates are developed by updating the population counts produced in the most recent decennial census with demographic components of change data and/or other indicators of population change. These rules prescribe the administrative procedure available to governmental units to request a challenge to the most current of these estimates.

§ 90.2 Policy of the Census Bureau.

It is the policy of the Census Bureau to provide the most accurate population estimates possible given the constraints of resources and available statistical techniques. It is also the policy of the Census Bureau, to the extent feasible, to provide governmental units the opportunity to seek a review of and provide additional data for these estimates and to present 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) *Census Bureau* means the U.S. Census Bureau, Department of Commerce.

(b) *Population Estimates Challenge* means, in accordance with this part, the process a governmental unit may use to provide additional input data for the Census Bureau's population estimate and the submission of substantive documentation in support thereof.

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

(d) *Population estimate* means a statistically developed calculation of the number of people living in a governmental unit to update the preceding census or earlier estimate.

(e) A *governmental unit* means the government of a county, municipality, township, incorporated place, or other minor civil division, which is a unit of general-purpose government below the State.

(f) A *non-functioning county or statistical equivalent* means a sub-State entity that does not function as an active general-purpose governmental unit. This situation exists in Connecticut, Rhode Island, for selected counties in Massachusetts, and for the Census Areas in Alaska.

(g) For the purposes of this program, an *eligible governmental unit* also includes the District of Columbia and non-functioning counties or statistical equivalents represented by a FSCPE member agency.

§ 90.4 General.

This part provides a procedure for a governmental unit to request a challenge of a population estimate of the Census Bureau. The Census Bureau, upon receipt of the appropriate documentation, will attempt to resolve the estimate with the governmental unit.

§ 90.5 Who may file a challenge.

A request for a challenge of a population estimate generated by the Census Bureau may be filed only by the chief executive officer or highest elected official of a governmental unit. In those instances where the FSCPE member agency represents a non-functioning county or statistical equivalent, the governor will serve as the chief executive officer or highest elected official.

§ 90.6 When a challenge may be filed.

(a) A request for a challenge to a population estimate may be filed any time up to 90 days after the release of the estimate by the Census Bureau. Publication by the Census Bureau on its website (*www.census.gov*) shall constitute release. Documentation requesting a challenge of any estimate may also be filed any time up to 90 days after the date the Census Bureau, on its own initiative, revises that estimate.

(b) If, however, a governmental unit has a sufficiently meritorious reason for not filing in a timely manner, the Census Bureau has the discretion to accept the late request.

§ 90.7 Where to file a challenge.

A request for a population estimate challenge must be prepared in writing by the governmental unit and filed with the Chief, Population Division, Census Bureau by sending the request

via email to *POP.challenge@census.gov* or to a physical address that the Census Bureau will specify in the updated ''Population Estimates Challenge Program Review Guide'' to be posted in the *census.gov* website. The governmental unit must designate a contact person who can be reached by telephone or email during normal business hours should questions arise with regard to the submitted materials.

§ 90.8 Evidence required.

(a) The governmental unit shall provide whatever evidence it has relevant to the request at the time of filing. The Census Bureau may request further evidence when necessary. The evidence submitted must be consistent with the criteria, standards, and regular processes the Census Bureau employs to generate the population estimate. Currently, the Census Bureau challenge process cannot accept estimates developed from methods different from those used by the Census Bureau. The Census Bureau will only accept a challenge when the evidence provided indicates the use of incorrect data, processes, or calculations in the estimates.

(b) For counties and statistical equivalents, the Census Bureau uses a cohort-component of change method to produce population estimates. Each year, the components of change are updated. These components include births, deaths, migration, and change in the group quarters population. The Census Bureau will consider a challenge based on additional information on one or more of the components of change or about the group quarters population in a locality.

(c) For minor civil divisions and incorporated places, the Census Bureau uses a housing unit method to distribute a county population to places within its legal boundaries. The components in this method include housing units estimates, average household population per housing unit, and an estimate of the population in group quarters. The estimation formula was simplified to increase the accuracy of the estimates following the application of differential privacy as per the Census Bureau's new disclosure avoidance framework. As a result, the persons per household (PPH) and occupancy rate components were replaced with the average household population per housing unit. Additionally, the Census Bureau will consider a challenge based on data related to changes in an area's housing stock, such as data on demolitions, condemned units, uninhabitable units, building permits, or mobile home placements or other housing inventory-based data deemed comparable by the Census Bureau. The Census Bureau will also consider a challenge based on additional information about the group quarters population in a locality.

(d) The Census Bureau will also provide a guide on its website as a reference for governmental units to use in developing their data as evidence to support a challenge to the population estimate. In addition, a governmental unit may address any additional questions by contacting the Census Bureau at 301–763–2461 or by sending emails to *POP.challenge@census.gov* or by delivering mail to a physical address that the Census Bureau will specify in the updated version of the ''Population Estimates Challenge Program Review Guide'' to be posted in the *census.gov* website.

§ 90.9 Review of challenge.

The Chief, Population Division, Census Bureau, or the Chief's designee shall review the evidence provided with the request for the population estimate challenge, shall work with the governmental unit to verify the data provided by the governmental unit, and evaluate the data to resolve the issues raised by the governmental unit. Furthermore, the designated FSCPE agencies are encouraged to serve as conduits with local governments in the review of pre-release estimates, to the extent that this is possible given data confidentiality requirements for pre-release data. Thereafter, the Census Bureau shall respond in writing with a decision to accept or deny the challenge. In the event that the Census Bureau finds that the population estimate should be updated, it will also post the revised estimate on the Census Bureau's website (*www.census.gov*).

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

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;

(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]

CHAPTER II—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, DEPARTMENT OF COMMERCE

SUBCHAPTER A—MEASUREMENT SERVICES

PART 200—POLICIES, SERVICES, PROCEDURES, AND FEES

Sec.

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

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 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

Amercian 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

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 22161[3]. NTIS also sells microfiche copies of all NIST GPO-published documents, as well as paper copy and microfiche versions of NIST Interagency Reports.

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

[2] For 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.

[3] The 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.

§ 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 stations 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

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 10^{11} 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 restrictions 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 recommeded 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

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 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 assessed 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, decribes 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

Subpart B—Purchase Procedure

Subpart C—Description of Services and List of Fees

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.

§ 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—CHIPS PROGRAM

PART 231—CLAWBACKS OF CHIPS FUNDING

Subpart A—Definitions

Subpart B—General

Subpart C—Notification, Review, and Recovery

Subpart D—Other Provisions

AUTHORITY: 15 U.S.C. 4651, *et seq.*

SOURCE: 88 FR 61614, Sept. 25, 2023, unless otherwise noted.

Subpart A—Definitions

§ 231.101 Existing facility.

Existing facility means:

(a) Any facility, the current status of which, including its semiconductor manufacturing capacity, is memorialized in the required agreement entered into by the covered entity and the Secretary pursuant to 15 U.S.C. 4652(a)(6)(C) and based on the Secretary's assessments of historical capacity measurements. Only facilities built, equipped, and operating prior to entering into the required agreement are considered to be existing facilities. A facility that undergoes significant renovations not memorialized in the required agreement shall no longer qualify as an existing facility.

(b) Notwithstanding paragraph (a) of this section, in the case of a facility that is being equipped, expanded, or modernized at the time of entering into the required agreement, the Secretary may, at their discretion, memorialize the planned semiconductor manufacturing capacity of that facility or any appropriate lower semiconductor manufacturing capacity in the required agreement and deem such facility an existing facility.

§ 231.102 Foreign country of concern.

The term *foreign country of concern* means:

(a) A country that is a covered nation (as defined in 10 U.S.C. 4872(d)); and

(b) Any country that the Secretary, in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.

§ 231.103 Foreign entity.

Foreign entity, as used in this part:

(a) Means—

(1) A government of a foreign country or a foreign political party;

(2) A natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in section 8 U.S.C. 1324b(a)(3)); or

(3) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; and

(b) Includes—

(1) Any person owned by, controlled by, or subject to the jurisdiction or direction of an entity listed in paragraph (a) of this section;

(2) Any person, wherever located, who acts as an agent, representative, or employee of an entity listed in paragraph (a) of this section;

(3) Any person who acts in any other capacity at the order, request, or under the direction or control of an entity listed in paragraph (a) of this section, or of a person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part by an entity listed in paragraph (a) of this section;

(4) Any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise, owns 25 percent or more of the equity interests of an entity listed in paragraph (a) of this section;

(5) Any person with significant responsibility to control, manage, or direct an entity listed in paragraph (a) of this section;

(6) Any person, wherever located, who is a citizen or resident of a country controlled by an entity listed in paragraph (a) of this section; or

(7) Any corporation, partnership, association, or other organization organized under the laws of a country controlled by an entity listed in paragraph (a) of this section.

§ 231.104 Foreign entity of concern.

Foreign entity of concern means any foreign entity that is—

(a) Designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. 1189;

(b) Included on the Department of Treasury's list of Specially Designated Nationals and Blocked Persons (SDN List), or for which one or more individuals or entities included on the SDN list, individually or in the aggregate, directly or indirectly, hold at least 50 percent of the outstanding voting interest;

(c) Owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (as defined in 10 U.S.C. 4872(d));

(1) A person is owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country listed in 10 U.S.C. 4872(d) where:

(i) The person is:

(A) a citizen, national, or resident of a foreign country listed in 10 U.S.C. 4872(d); and

(B) located in a foreign country listed in 10 U.S.C. 4872(d);

(ii) The person is organized under the laws of or has its principal place of business in a foreign country listed in 10 U.S.C. 4872(d);

(iii) 25 percent or more of the person's outstanding voting interest, board seats, or equity interest is held directly or indirectly by the government of a foreign country listed in 10 U.S.C. 4872(d); or

(iv) 25 percent or more of the person's outstanding voting interest, board seats, or equity interest is held directly or indirectly by any combination of the persons who fall within subsections (i)–(iii);

(d) Alleged by the Attorney General to have been involved in activities for which a conviction was obtained under—

(1) The Espionage Act, 18 U.S.C. 792 *et seq.;*

(2) 18 U.S.C. 951;

(3) The Economic Espionage Act of 1996, 18 U.S.C. 1831 *et seq.;*

(4) The Arms Export Control Act, 22 U.S.C. 2751 *et seq.;*

(5) The Atomic Energy Act, 42 U.S.C. 2274, 2275, 2276, 2277, or 2284;

(6) The Export Control Reform Act of 2018, 50 U.S.C. 4801 *et seq.;*

(7) The International Economic Emergency Powers Act, 50 U.S.C. 1701 *et seq.;* or

(8) 18 U.S.C. 1030.

(e) Included on the Bureau of Industry and Security's Entity List (15 CFR part 744, supplement no. 4);

(f) Included on the Department of the Treasury's list of Non-SDN Chinese Military-Industrial Complex Companies (NS–CMIC List), or for which one or more individuals or entities included on the NS–CMIC list, individually or in the aggregate, directly or indirectly, hold at least 50 percent of the outstanding voting interest; or

(g) Determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States under this chapter.

§ 231.105 Joint research.

(a) *Joint research* means any research and development activity that is jointly undertaken by two or more parties, including any research and development activities undertaken as part of a joint venture as defined at 15 U.S.C. 4301(a)(6).

(b) Notwithstanding paragraph (a) of this section, the following is not joint research:

(1) A standards-related activity (as such term is defined in 15 CFR part 772);

(2) Research and development conducted exclusively between and among employees of a covered entity or between and among entities that are related entities to the covered entity;

(3) Research, development, or engineering related to a manufacturing process for an existing product solely to enable use of foundry, assembly, test, or packaging services for integrated circuits;

(4) Research, development, or engineering involving two or more entities to establish or apply a drawing, design, or related specification for a product to be purchased and sold between or among such entities; and

(5) Warranty, service, and customer support performed by a covered entity or an entity that is a related entity of a covered entity.

§ 231.106 Knowingly.

Knowingly means acting with knowledge that a circumstance exists or is substantially certain to occur, or with an awareness of a high probability of its existence or future occurrence. Such awareness can be inferred from evidence of the conscious disregard of facts known to a person or of a person's willful avoidance of facts.

§ 231.107 Legacy semiconductor.

(a) *Legacy semiconductor* means:

(1) For the purposes of a semiconductor wafer facility:

(i) A silicon wafer measuring 8 inches (or 200 millimeters) or smaller in diameter; or

(ii) A compound wafer measuring 6 inches (or 150 millimeters) or smaller in diameter.

(2) For the purposes of a semiconductor fabrication facility:

(i) A digital or analog logic semiconductor that is of the 28-nanometer generation or older (*i.e.*, has a gate length of 28 nanometers or more for a planar transistor);

(ii) A memory semiconductor with a half-pitch greater than 18 nanometers for Dynamic Random Access Memory (DRAM) or less than 128 layers for Not AND (NAND) flash that does not utilize emerging memory technologies, such as transition metal oxides, phase-change memory, perovskites, or ferromagnetics relevant to advanced memory fabrication; or

(iii) A semiconductor identified by the Secretary in a public notice issued under 15 U.S.C. 4652(a)(6)(A)(ii).

(3) For the purposes of a semiconductor packaging facility, a semiconductor that does not utilize advanced three-dimensional (3D) integration packaging, under paragraph (b)(3) of this section.

(b) Notwithstanding paragraph (a) of this section, the following are not legacy semiconductors:

(1) Semiconductors critical to national security, as defined in § 231.118;

(2) A semiconductor with a post-planar transistor architecture (such as fin-shaped field field-effect transistor (FinFET) or gate all around field-effect transistor); and

(3) A semiconductor utilizing advanced three-dimensional (3D) integration packaging, such as by directly attaching one or more die or wafer, through silicon vias, through mold vias, or other advanced methods.

§ 231.108 Material expansion.

Material expansion means:

(1) with respect to an existing facility, the increase of the semiconductor manufacturing capacity of that facility by more than five percent of the capacity memorialized in the required agreement due to the addition of a cleanroom, production line or other physical space, or a series of such additions; or

(2) any construction of a new facility for semiconductor manufacturing.

[88 FR 89574, Dec. 28, 2023]

§ 231.109 Members of the affiliated group.

Members of the affiliated group includes any entity that is a member of the covered entity's ''affiliated group,'' as that term is defined under 26 U.S.C. 1504(a), without regard to 26 U.S.C. 1504(b)(3).

§ 231.110 Person.

The term *person* includes an individual, partnership, association, corporation, organization, or any other combination of individuals.

§ 231.111 Predominately serves the market.

Predominately serves the market means that at least 85 percent of the output of the semiconductor manufacturing facility (*e.g.*, wafers, semiconductor devices, or packages) by value is incorporated into final products (*i.e.*, not an intermediate product that is used as factor inputs for producing other goods) that are used or consumed in that market.

§ 231.112 Required agreement.

(a) *Required agreement* means the agreement that is entered into by a covered entity and the Secretary on or before the date on which the Secretary awards Federal financial assistance under 15 U.S.C. 4652. The required agreement shall include, *inter alia*, provisions describing the prohibitions on certain expansion transactions and on certain joint research or technology licensing.

(b) The required agreement shall memorialize:

(1) The covered entity's existing facilities in foreign countries of concern; and

(2) Any ongoing joint research or technology licensing activities with foreign entities of concern that relate to technology or products that raise national security concerns as identified by the Secretary.

(c) The required agreement may include additional terms to mitigate national security risks, including as contemplated in § 231.204.

(d) To the extent consistent with the requirements of 15 U.S.C. 4652 and these regulations, the Secretary and the covered entity may amend the required agreement by mutual consent.

§ 231.113 Research and development.

Research and development means theoretical analysis, exploration, or experimentation; or the extension of investigative findings and theories of a scientific or technical nature into practical application, including the experimental production and testing of models, devices, equipment, materials, and processes.

§ 231.114 Secretary.

Secretary means the Secretary of Commerce or the Secretary's designees.

§ 231.115 Semiconductor.

Semiconductor means an integrated electronic device or system most commonly manufactured using materials such as, but not limited to, silicon, silicon carbide, or III–V compounds, and processes such as, but not limited to, lithography, deposition, and etching. Such devices and systems include but are not limited to analog and digital electronics, power electronics, and photonics, for memory, processing, sensing, actuation, and communications applications.

§ 231.116 Semiconductor manufacturing.

Semiconductor manufacturing means semiconductor wafer production, semiconductor fabrication or semiconductor packaging. Semiconductor wafer production includes the processes of wafer slicing, polishing, cleaning, epitaxial deposition, and metrology. Semiconductor fabrication includes the process of forming devices such as transistors, poly capacitors, non-metal resistors, and diodes on a wafer of semiconductor material. Semiconductor packaging means the process of enclosing a semiconductor in a protective container (package) and providing external power and signal connectivity for the assembled integrated circuit.

§ 231.117 Semiconductor manufacturing capacity.

Semiconductor manufacturing capacity means the productive capacity of a facility for semiconductor manufacturing. In the case of a wafer production facility, semiconductor manufacturing capacity is measured in wafers per year. In the case of a semiconductor fabrication facility, semiconductor manufacturing capacity is measured in wafer starts per year. In the case of a semiconductor fabrication facility for wafers designed for wafer-to-wafer bonding structure, semiconductor manufacturing capacity is measured in stacked wafers per year. In the case of a packaging facility, semiconductor manufacturing capacity is measured in packages per year.

§ 231.118 Semiconductors critical to national security.

Semiconductors critical to national security means:

(a) Semiconductors utilizing nanomaterials, including 1D and 2D carbon allotropes such as graphene and carbon nanotubes;

(b) Compound and wide- and ultra-wide bandgap semiconductors;

(c) Radiation-hardened by process (RHBP) semiconductors;

(d) Fully depleted silicon on insulator (FD–SOI) semiconductors, other than with regard to semiconductor packaging operations with respect to such semiconductors of a 28-nonometerer generation or older;

(e) Silicon photonic semiconductors;

(f) Semiconductors designed for quantum information systems;

(g) Semiconductors designed for operation in cryogenic environments (at or below 77 Kelvin); and

(h) Any other semiconductors that the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, determines is critical to national security and issues a public notice of that determination.

§ 231.119 Significant renovations.

Significant renovations means building new cleanroom space or adding a production line or other physical space to an existing facility that, in the aggregate during the applicable term of the required agreement, increases semiconductor manufacturing capacity by 10 percent or more of the capacity memorialized in the required agreement.

231.120 Technology licensing.

Technology licensing means:

(a) An express or implied contractual agreement in which the rights owned by, licensed to or otherwise lawfully available to one party in any trade secrets or knowhow are sold, licensed or otherwise made available to another party.

(b) Notwithstanding paragraph (a) of this section, the following is not technology licensing:

(1) Licensing of patents, including licenses related to standard essential patents or cross licensing activities;

(2) Licensing or transfer agreements conducted exclusively between a covered entity and related entities, or between or among related entities of the covered entity;

(3) A standards-related activity (as such term is defined in 15 CFR part 772);

(4) Agreements that grant patent rights only with respect to ''published information'' and no proprietary information is shared;

(5) An implied or general intellectual property license relating to the use of a product that is sold by a covered entity or related entities;

(6) Technology licensing related to a manufacturing process for an existing

product solely to enable use of assembly, test, or packaging services for integrated circuits;

(7) Technology licensing involving two or more entities to establish or apply a drawing, design, or related specification for a product to be purchased and sold between or among such entities;

(8) Warranty, service, and customer support performed by a covered entity or an entity that is a related entity of a covered entity; and

(9) Disclosures of technical information to a customer solely for the design of integrated circuits to be manufactured by the funding recipient for that customer.

§ 231.121 Technology or product that raises national security concerns.

A technology or product that raises national security concerns means:

(a) Any semiconductor critical to national security;

(b) Any item listed in Category 3 of the Commerce Control List (supplement no. 1 to part 774 of the Export Administration Regulations, 15 CFR part 774) that is controlled for National Security (''NS'') reasons, as described in 15 CFR 742.4, or Regional Stability (''RS'') reasons, as described in 15 CFR 742.6; and

(c) Any other technology or product that the Secretary determines raises national security concerns.

Subpart B—General

§ 231.201 Scope.

This subpart sets forth the prohibitions to be implemented in the required agreements, as well as record retention requirements related to those prohibitions.

§ 231.202 Prohibition on certain expansion transactions. (Expansion Clawback)

(a) During the 10-year period beginning on the date of the award of Federal financial assistance under 15 U.S.C. 4652, the covered entity and members of the affiliated group may not engage in any significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern; provided that this prohibition will not apply to—

(1) Existing facilities or equipment of a covered entity or any member of the affiliated group for manufacturing legacy semiconductors; or

(2) Significant transactions involving material expansion of semiconductor manufacturing capacity that—

(i) Produces legacy semiconductors; and

(ii) Predominately serves the market of a foreign country of concern.

(b) No later than the date of the award of Federal financial assistance award under 15 U.S.C. 4652, the covered entity shall enter into a required agreement that contains this prohibition and otherwise implements the requirements of this part.

§ 231.203 Prohibition on certain joint research or technology licensing. (Technology Clawback)

(a) During the applicable term of a Federal financial assistance award under 15 U.S.C. 4652, a covered entity may not knowingly engage in any joint research or technology licensing with a foreign entity of concern that relates to a technology or product that raises national security concerns.

(b) Notwithstanding paragraph (a) of this section, this prohibition will not apply to joint research or technology licensing that relate to technology or products that raise national security concerns that were ongoing prior to the Secretary's determination that such technology or products raised national security concerns. Any such ongoing joint research or technology licensing shall be memorialized in the required agreement.

§ 231.204 Additional conditions on certain joint research or technology licensing.

(a) In addition to the conditions of the Technology Clawback (§ 231.203), the Secretary will specify, in the required agreement with the covered entity, any additional measures that covered entities must take to mitigate the risk of circumvention of the Technology Clawback, including measures that will allow the Secretary to recover up to the full amount of the Federal financial assistance provided to

the covered entity, if, during the term applicable to the award, any related entity engages in joint research or technology licensing that would violate the Technology Clawback if engaged in by the covered entity.

(b) For purposes of this rule, a related entity is any entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the covered entity.

§ 231.205 Retention of records.

(a) During the 10-year period beginning on the date of the Federal financial assistance award under 15 U.S.C. 4652 and for a period of seven years following any significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern, a covered entity or member of the affiliated group planning or engaging in any such significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern shall maintain records related to the significant transaction in a manner consistent with the recordkeeping practices used in their ordinary course of business for such transactions.

(b) A covered entity that is notified that a transaction is being reviewed by the Secretary shall immediately take steps to retain all records relating to such transaction, including if those records are maintained by a member of the affiliated group or by related entities.

Subpart C—Notification, Review, and Recovery

§ 231.301 Procedures for notifying the Secretary of significant transactions.

During the 10-year period beginning on the date of the Federal financial assistance award under 15 U.S.C. 4652, the covered entity shall submit a notification to the Secretary regarding any planned significant transactions of the covered entity or members of the affiliated group that may involve the material expansion of semiconductor manufacturing capacity in a foreign country of concern, regardless of whether the covered entity believes the transaction falls within an exception in 15 U.S.C. 4652(a)(6)(C)(ii). A notification must include the information set forth in § 231.302 and be submitted to *notifications@chips.gov*.

§ 231.302 Contents of notifications; certifications.

The notification required by § 231.301 shall be certified by the covered entity's chief executive officer, president, or equivalent corporate officer, and shall contain the following information about the parties and the transaction, which must be accurate and complete:

(a) The covered entity and any member of the affiliated group that is party to the transaction, including for each a primary point of contact, telephone number, and email address.

(b) The identity and location(s) of all other parties to the transaction.

(c) Information, including organizational chart(s), on the ownership structure of parties to the transactions.

(d) A description of any other significant foreign involvement, *e.g.*, through financing, in the transaction.

(e) The name(s) and location(s) of any entity in a foreign country of concern where or at which semiconductor manufacturing capacity may be materially expanded by the transaction.

(f) A description of the transaction, including the specific types of semiconductors currently produced at the facility planned for expansion, the current production technology node (or equivalent information) and semiconductor manufacturing capacity, as well as the specific types of semiconductors planned for manufacture, the planned production technology node, and planned semiconductor manufacturing capacity.

(g) If the covered entity asserts that the transaction involves the material expansion of semiconductor manufacturing capacity that produces legacy semiconductors that will predominately serve the market of a foreign country of concern, documentation as to where the final products incorporating the legacy semiconductors are to be used or consumed, including the percent of semiconductor manufacturing capacity or percent of sales revenue that will be accounted for by use

or consumption of the final goods in the foreign country of concern.

(h) If applicable, an explanation of how the transaction meets the requirements, set forth in 15 U.S.C. 4652(a)(6)(C)(ii), for an exception to the prohibition on significant transactions that involve the material expansion of semiconductor manufacturing capacity, including details on the calculations for semiconductor manufacturing capacity and/or sales revenue by the market in which the final goods will be consumed.

§ 231.303 Response to notifications.

The Secretary will review the notification provided pursuant to § 231.301 for completeness, and may:

(a) Reject the notification, and, if so, inform the covered entity promptly in writing, if:

(1) The notification does not meet the requirements of § 231.302; or

(2) The notification contains apparently false or misleading information;

(b) Request additional information from the covered entity to complete the notification; or

(c) Accept the notification and initiate a review under § 231.304, and, if so, inform the covered entity promptly in writing.

§ 231.304 Initiation of review.

(a) The Secretary may initiate a review of a transaction:

(1) After accepting a notification pursuant to § 231.303(c); or

(2) Upon the Secretary's own initiative, where the Secretary believes that a transaction may be prohibited. In determining whether to initiate a review, the Secretary may consider all available information, including information submitted by persons other than the covered entity to *notifications@chips.gov*.

(b) Where the Secretary initiates review of a transaction under paragraph (a)(2) of this section, the Secretary will notify the covered entity promptly in writing.

(c) The Secretary will consult with the Secretary of Defense and the Director of National Intelligence upon the initiation of a review of any transaction.

§ 231.305 Procedures for review.

(a) During the review, the Secretary may request additional information from the covered entity. The covered entity shall promptly provide any additional information. The Secretary will determine whether the additional information is sufficient for the Secretary to complete the review, and may seek additional information from the covered entity if necessary. Where the Secretary has determined that the additional information is sufficient to allow the Secretary to complete the review, the Secretary will inform the covered entity in writing. The time periods for any determinations by the Secretary under this section will be tolled from the date on which the request for additional information is sent to the covered entity until the Secretary determines that the response is sufficient to complete the review.

(b) Not later than 90 days after a notification is accepted by the Secretary, or after the Secretary initiates a review under § 231.304(a)(2), and subject to any tolling pursuant to § paragraph (a) of this section, the Secretary will provide the covered entity an initial determination in writing as to whether the transaction would violate § 231.202. The initial determination may include a finding that the covered entity or a member of the affiliated group has violated § 231.202.

(c) If the Secretary's initial determination is that the transaction would violate § 231.202 or that the covered entity or a member of the affiliated group has violated § 231.202 by engaging in a prohibited significant transaction, then:

(1) The covered entity may within 14 days of receipt of the initial determination request that the Secretary reevaluate the initial determination, including by submitting additional information.

(2) If the covered entity does not make such a request within 14 days of receipt of the initial determination, the initial determination will become final. If the covered entity recipient does request a reconsideration of the initial determination, the Secretary

will issue the final determination within 60 days after the receipt by the Secretary of the request for reconsideration.

(3) Upon the issuance of a final determination that a transaction would violate § 231.202 or that the covered entity or a member of the affiliated group has violated § 231.202 by engaging in a prohibited significant transaction, the covered entity must cease or abandon the transaction (or, if applicable, ensure that the member of the affiliated group ceases or abandons the transaction), and the covered entity's chief executive officer, president, or equivalent corporate official, must provide a signed letter electronically to *notifications@chips.gov* within 45 days of the final determination certifying that the transaction has ceased or been abandoned. Such letter must certify, under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), that the information in the letter is accurate and complete.

(d) Unless recovery is waived pursuant to § 231.306, a violation of § 231.202 for engaging in a prohibited significant transaction or failing to cease or abandon a planned significant transaction that the Secretary has determined would be in violation of § 231.202 will result in the recovery of the full amount of the Federal financial assistance provided to the covered entity, which amount will be a debt owed to the U.S. Government.

(e) The running of any deadline or time limitation for the Secretary will be suspended during a lapse in appropriations.

§ 231.306 Mitigation of national security risks.

If the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, determines that a covered entity or member of the affiliated group is planning to undertake or has undertaken a significant transaction that violates or would violate § 231.202, the Secretary may seek to take measures in connection with the transaction to mitigate the risk to national security. Such measures may include the negotiation of an amendment to the required agreement (a ''mitigation agreement'') with the covered entity to mitigate the risk to national security in connection with the transaction. The Secretary has discretion to waive, in whole or part, recovery of the Federal financial assistance provided to the covered entity for violation of § 231.305(d) in circumstances where an appropriate mitigation agreement has been entered into and complied with by the covered entity. If a covered entity fails to comply with the mitigation agreement or if other conditions in the mitigation agreement are violated, the Secretary may recover the full amount of the Federal financial assistance provided to the covered entity.

§ 231.307 Review of actions that may violate the prohibition on certain joint research or technology licensing.

(a) The Secretary may initiate a review of any joint research or technology licensing the Secretary believes may be prohibited by § 231.203. In determining whether to initiate a review, the Secretary may consider all available information, including information submitted by persons other than a covered entity to *notifications@chips.gov*.

(b) If the Secretary opens an initial review, the Secretary will notify the covered entity in writing and may request additional information from the covered entity. The covered entity shall provide the additional information to the Secretary within three business days, or within a longer time frame if the covered entity requests in writing and the Secretary grants that request in writing.

(c) The Secretary may make an initial determination as to whether the covered entity violated § 231.203.

(d) If the Secretary's initial determination is that the covered entity did not violate § 231.203, the Secretary shall inform the covered entity in writing and close the review.

(e) If the Secretary's initial determination is that the covered entity violated § 231.203, the Secretary will provide that initial determination to the covered entity in writing.

(1) The covered entity may within 14 days of receipt of the initial determination request that the Secretary reevaluate the initial determination, including by submitting additional information.

(2) If the covered entity does not make such a request within 14 days of receipt of the initial determination, the initial determination will become final. If the covered entity does request a reconsideration of the initial determination, the Secretary will issue the final determination within 45 days of the initial determination.

If the Secretary makes a final determination that an action violated § 231.203, the Secretary will recover the full amount of the Federal financial assistance provided to the covered entity, which will be a debt owed to the U.S. Government.

§ 231.308 Recovery and other remedies.

(a) Interest on a debt under § 231.305 or § 231.307 will be calculated from the date on which the Secretary provides a final notification that an action violated § 231.202 or § 231.203.

(b) The Secretary may take action to collect a debt under § 231.305 or § 231.307 if such debt is not paid within the time prescribed by the Secretary in the required agreement or mitigation agreement. In addition or instead, the matter may be referred to the Department of Justice for appropriate action.

(c) If the Secretary makes an initial determination that § 231.202 or § 231.203 have been violated, the Secretary may suspend Federal financial assistance.

(d) The recoveries and remedies available under this section are without prejudice to other available remedies, including remedies articulated in the required agreement or civil or criminal penalties.

Subpart D—Other Provisions

§ 231.401 Amendment.

Not later than August 9, 2024, and not less frequently than once every two years thereafter for the eight-year period after the last award of Federal financial assistance under 15 U.S.C. 4652 is made, the Secretary, after public notice and an opportunity for comment, if applicable and necessary, will issue a public notice identifying any additional semiconductors included in the meaning of the term ''legacy semiconductor.''

§ 231.402 Submission of false information.

Section 1001 of 18 U.S.C., as amended, shall apply to all information provided to the Secretary under 15 U.S.C. 4652 or under the regulations found in this part.

§ 231.403 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

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

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	⅝
More than 50 lb. and not greater than 100 lbs	2	¾
More than 100 lb. and not greater than 150 lb	3	1¼
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
⅓ 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 1⅛ 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 1⅛ 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

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 1⅛ inches from the end of the staves in the case of a barrel or ¾ barrel, or at a point 1 inch or ⅞ inch from the end of the staves in the case of a ½ barrel or ⅓ 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 16¾ inches and in the case of the standard cranberry barrel is 15⅞ 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:

Dimensions	Barrel for fruits, vegetables, and other dry commodities other than cranberries (inches)	Barrel for cranberries (inches)
Diameter of head	17⅛	16¼
Effective diameter of head (see § 241.4)	16¾	15⅞
Distance between heads	26	25¼
Circumference of bulge, outside measurement	64	58½
Length of stave	28½	28½

(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	¾ barrel (inches)	½ barrel (inches)	⅓ barrel (inches)
Effective diameter of head (see § 241.4)	15¼	13⅜	11⅝
Distance between heads	23½	20½	18
Circumference of bulge, outside measurement	58½	51½	45¼

SUBDIVISIONS OF BARREL FOR CRANBERRIES

Effective diameter of head (see § 241.4)	14⅜	12⅝	11
Distance between heads	23	20	17½
Circumference of bulge, outside measurement	53⅜	47	41⅜

(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	¼
Distance between heads	¼

	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 ..	1⅜
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.

Size of subdivision	Tolerance	
	For fruits, vegetables, and other dry commodities (inches)	For cranberries (inches)
¾ barrel	1⅜ (1.375)	1¼ (1.25)
½ barrel	1¼ (1.25)	1⅛ (1.125)
⅓ barrel	1⅛ (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.
255.2 Qualifications.
255.3 Award of fellowships.
255.4 Allowances and expenses.
255.5 Progress reports.
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

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 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]

[1] Not filed with the Office of the Federal Register.

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

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

Subpart A—General

Subpart B—Traffic and Vehicular Regulations

Subpart C—Buildings and Grounds

Subpart D—Penalties

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

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 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, corridors, 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

Subpart A—General

Subpart B—Establishment and Deployment of Teams

Subpart C—Investigations

Subpart D—Collection and Preservation of Evidence; Information Created Pursuant to an Investigation; and Protection of 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

''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 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;

(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 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 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 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;

(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]

§ 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 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, materials, 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 information 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.

SUBCHAPTER H—MARKING OF TOY, LOOK-ALIKE, AND IMITATION FIREARMS

PART 272—MARKING OF TOY, LOOK-ALIKE AND IMITATION FIREARMS

Sec.
272.1 Applicability.
272.2 Prohibitions.
272.3 Approved markings.
272.4 Waiver.
272.5 Preemption.

AUTHORITY: Section 4 of the Federal Energy Management Improvement Act of 1988, 15 U.S.C. 5001.

SOURCE: 54 FR 19358, May 5, 1989, unless otherwise noted. Redesignated at 78 FR 4765, Jan. 23, 2013.

§ 272.1 Applicability.

This part applies to toy, look-alike, and imitation firearms (''devices'') having the appearance, shape, and/or configuration of a firearm and produced or manufactured and entered into commerce on or after May 5, 1989, including devices modelled on real firearms manufactured, designed, and produced since 1898. This part does not apply to:

(a) Non-firing collector replica antique firearms, which look authentic and may be a scale model but are not intended as toys modelled on real firearms designed, manufactured, and produced prior to 1898;

(b) Traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof, as described in American Society for Testing and Materials standard F 589–85, Standard Consumer Safety Specification for Non-Powder Guns, June 28, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the IHS Inc., 15 Inverness Way East, Englewood, CO 80112, *www.global.ihs.com*, Phone: 800.854.7179 or 303.397.7956, Fax: 303.397.2740, Email: *global@ihs.com*. A copy is available for inspection in the Office of the Chief Counsel for NIST, National Institute of Standards and Technology, Telephone: (301) 975–2803, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(c) Decorative, ornamental, and miniature objects having the appearance, shape and/or configuration of a firearm, including those intended to be displayed on a desk or worn on bracelets, necklaces, key chains, and so on, provided that the objects measure no more than thirty-eight (38) millimeters in height by seventy (70) millimeters in length, the length measurement excluding any gun stock length measurement.

[57 FR 48453, Oct. 26, 1992, as amended at 69 FR 18803, Apr. 9, 2004. Redesignated and amended at 78 FR 4765, Jan. 23, 2013]

§ 272.2 Prohibitions.

No person shall manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm (''device'') covered by this part as set forth in § 272.1 unless such device contains, or has affixed to it, one of the markings set forth in § 272.3, or unless this prohibition has been waived by § 272.4.

[78 FR 4765, Jan. 23, 2013]

§ 272.3 Approved markings.

The following markings are approved by the Secretary of Commerce:

(a) A blaze orange (Fed-Std-595B 12199) or orange color brighter than that specified by the federal standard color number, solid plug permanently affixed to the muzzle end of the barrel as an integral part of the entire device and recessed no more than 6 millimeters from the muzzle end of the barrel.

(b) A blaze orange (Fed-Std-595B 12199) or orange color brighter than that specified by the Federal Standard color number, marking permanently affixed to the exterior surface of the barrel, covering the circumference of

the barrel from the muzzle end for a depth of at least 6 millimeters.

(c) Construction of the device entirely of transparent or translucent materials which permits unmistakable observation of the device's complete contents.

(d) Coloration of the entire exterior surface of the device in white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern.

(e) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of Federal Standard 595B, December 1989, color number 12199 (Fed-Std-595B 12199), may be obtained from the General Services Administration at General Services Administration, Federal Acquisition Service, FAS Office of General Supplies and Services, Engineering and Cataloging Division (QSDEC) Arlington, VA 22202 or at the General Services Administration Web site at: *http://apps.fas.gsa.gov/pub/fedspecs/*. A copy may be inspected in the Office of the Chief Counsel for NIST, National Institute of Standards and Technology, Telephone: (301) 975–2803 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

[54 FR 19358, May 5, 1989, as amended at 57 FR 48454, Oct. 26, 1992; 69 FR 18803, Apr. 9, 2004. Redesignated and amended at 78 FR 4765, Jan. 23, 2013]

§ 272.4 Waiver.

The prohibitions set forth in § 272.2 may be waived for any toy, look-alike or imitation firearm that will be used only in the theatrical, movie or television industry. A request for such a waiver should be made, in writing, to the Chief Counsel for NIST, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1052, Gaithersburg, Maryland 20899–1052. The request must include a sworn affidavit which states that the toy, look-alike, or imitation firearm will be used only in the theatrical, movie or television industry. A sample of the item must be included with the request.

[78 FR 4765, Jan. 23, 2013]

§ 272.5 Preemption.

In accordance with section 4(g) of the Federal Energy Management Improvement Act of 1988 (15 U.S.C. 5001(g)), the provisions of section 4(a) of that Act and the provisions of this part supersede any provision of State or local laws or ordinances which provides for markings or identification inconsistent with the provisions of section 4 of that Act or the provisions of this part.

[54 FR 19358, May 5, 1989. Redesignated at 78 FR 4765, Jan. 23, 2013]

SUBCHAPTER I—METRIC CONVERSION POLICY FOR FEDERAL AGENCIES

PART 273—METRIC CONVERSION POLICY FOR FEDERAL AGENCIES

AUTHORITY: 15 U.S.C. 1512 and 3710, 15 U.S.C. 205a, DOO 30–2A.

SOURCE: 56 FR 160, Jan. 2, 1991, unless otherwise noted. Redesignated at 56 FR 41283, Aug. 20, 1991, and further redesignated at 78 FR 4766, Jan. 23, 2013.

§ 273.1 Purpose.

To provide policy direction for Federal agencies in their transition to use of the metric system of measurement.

§ 273.2 Definition.

Metric system means the International System of Units (SI) established by the General Conference of Weights and Measures in 1960, as interpreted or modified from time to time for the United States by the Secretary of Commerce under the authority of the Metric Conversion Act of 1975 and the Metric Education Act of 1978.

Other business-related activities means measurement sensitive commercial or business directed transactions or programs, *i.e.*, standard or specification development, publications, or agency statements of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency. ''Measurement sensitive'' means the choice of measurement unit is a critical component of the activity, *i.e.*, an agency rule/regulation to collect samples or measure something at specific distances or to specific depths, specifications requiring intake or discharge of a product to certain volumes or flow rates, guidelines for clearances between objects for safety, security or environmental purposes, etc.

§ 273.3 General policy.

The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 5164) amended the Metric Conversion Act of 1975 to, among other things, require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producting competing products in nonmetric units.

(a) The Director of the National Institute of Standards and Technology will assist in coordinating the efforts of Federal agencies in meeting their obligations under the Metric Conversion Act, as amended.

(b) Federal agencies shall coordinate and plan for the use of the metric system in their procurements, grants and other business-related activities consistent with the requirements of the Metric Conversion Act, as amended. Federal agencies shall encourage and support an environment which will facilitate the transition process. When taking initiatives, they shall give due consideration to known effects of their actions on State and local governments and the private sector, paying particular attention to effects on small business.

(c) Each Federal agency shall be responsible for developing plans, establishing necessary organizational structure, and allocating appropriate resources to carry out this policy.

[56 FR 160, Jan. 2, 1991. Redesignated at 56 FR 41283, Aug. 20, 1991, and further redesignated and amended at 78 FR 4766, Jan. 23, 2013]

§ 273.4 Guidelines.

Each agency shall:

(a) Establish plans and dates for use of the metric system in procurements, grants and other business-related activities;

(b) Coordinate metric transition plans with other Federal agencies, State and local governments and the private sector;

(c) Require maximum practical use of metric in areas where Federal procurement and activity represents a predominant influence on industry standards (e.g.: weapon systems or space exploration). Strongly encourage metrication in industry standards where Federal procurement and activity is not the predominant influence, consistent with the legal status of the metric system as *the preferred system of weights and measures for United States trade and commerce*;

(d) Assist in resolving metric-related problems brought to the attention of the agency that are associated with agency actions, activities or programs undertaken in compliance with these guidelines or other laws or regulations;

(e) Identify measurement-sensitive agency policies and procedures and ensure that regulations, standards, specifications, procurement policies and appropriate legislative proposals are updated to remove barriers to transition to the metric system;

(f) Consider cost effects of metric use in setting agency policies, programs and actions and determine criteria for the assessment of their economic feasibility. Such criteria should appropriately weigh both agency costs and national economic benefits related to changing to the use of metric;

(g) Provide for full public involvement and timely information about significant metrication policies, programs and actions;

(h) Seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in agency publications;

(i) Consider, particularly, the effects of agency metric policies and practices on small business; and

(j) Consistent with the Federal Acquisition Regulation System (48 CFR), accept, without prejudice, products and services dimensioned in metric when they are offered at competitive prices and meet the needs of the Government, and ensure that acquisition planning considers metric requirements.

§ 273.5 Recommendations for agency organization.

Each agency shall:

(a) Participate, as appropriate, in the Interagency Council on Metric Policy (ICMP), and/or its working committee, the Metrication Operating Committee (MOC), in coordinating and providing policy guidance for the U.S. Government's transtion to use of the metric system.

(b) Designate a senior policy official to be responsible for agency metric policy and to represent the agency on the ICMP.

(c) Designate an appropriate official to represent the agency on the Metrication Operating Committee (MOC), an interagency committee reporting to the ICMP.

(d) Maintain liaison with private sector groups (such as the American National Metric Council and the U.S Metric Association) that are involved in planning for or coordinating National transition to the metric system.

(e) Provide for internal guidelines, training and documentation to assure employee awareness and understanding of agency metric policies and programs.

§ 273.6 Reporting requirement.

Each Federal agency shall, as part of its annual budget submission each fiscal year, report to the Congress on the metric implementation actions it has taken during the previous fiscal year. The report will include the agency's implementation plans, with a current timetable for the agency's transition to the metric system, as well as actions planned for the budget year involved to implement fully the metric system, in accordance with this policy. Reporting shall cease for an agency in the fiscal year after it has fully implemented metric usage, as prescribed by the Metric Conversion Act (15 U.S.C. 205b(2).)

§§ 273.7–273.199 [Reserved]

SUBCHAPTER J—ACCREDITATION AND ASSESSMENT PROGRAMS

PART 280—FASTENER QUALITY

Subpart A—General

Subpart B—Petitions, Affirmations, and Laboratory Accreditation

Subpart C—Enforcement

Subpart D—Recordal of Insignia

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 mismarked, 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 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 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 manufacturing 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 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 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

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 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 discovery. 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

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 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 nonsensitive 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.

(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 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

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;

(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 Register 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,

United States Patent and Trademark Office, ATTN: FQA, 600 Dulany Street, MDE–10A71, Alexandria, VA 22314–5793.

[61 FR 50558, Sept. 26, 1996. Redesignated and amended at 65 FR 39803, June 28, 2000; 70 FR 50181, Aug. 26, 2005; 72 FR 30704, June 4, 2007]

§ 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 resubmitted 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 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: Director, United States Patent and Trademark Office, ATTN: FQA, 600 Dulany Street, MDE–10A71, Alexandria, VA 22314–5793.

(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 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; 72 FR 30704, June 4, 2007]

§ 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]

§ 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.

AUTHORITY: 15 U.S.C. 272 *et seq.*

SOURCE: 66 FR 29221, May 30, 2001, unless otherwise noted.

§ 285.1 Purpose.

The purpose of this part 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).

[85 FR 60060, Sept. 24, 2020]

§ 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 or other means to ensure open participation, shall establish the requested LAP, if the Chief of NVLAP determines there is need for the requested LAP.

[66 FR 29221, May 30, 2001, as amended at 76 FR 78815, Dec. 20, 2011]

§ 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 management system documentation to NVLAP (or a designated NVLAP assessor) prior to the assessment process.

[85 FR 60060, Sept. 24, 2020]

§ 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.

(4) At the conclusion of the assessment, the assessor conducts an exit briefing to discuss observations and any nonconformities 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 nonconformities during the on-site assessment, and nonconformities 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 nonconformities have either been corrected and/or a plan of corrective actions as described in the NVLAP handbooks.

(3) If substantial nonconformities have been cited, NVLAP may require an additional on-site assessment, at additional cost to the laboratory, prior to granting accreditation. All nonconformities 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.

[66 FR 29221, May 30, 2001, as amended at 85 FR 60060, Sept. 24, 2020]

§ 285.8 Proficiency testing.

(a) *Proficiency testing requirements.* Proficiency testing undertaken to meet the criteria for NVLAP accreditation shall be consistent with the provisions contained in NIST Handbook 150, *NVLAP Procedures and General Requirements* (incorporated by reference, see § 285.16), where applicable, including revisions from time to time. Laboratories must participate in proficiency testing as specified for each LAP in the NVLAP program handbooks.

(b) *Analysis and reporting.* Proficiency testing results are analyzed by NVLAP and results of the analysis are made known to the participants. Any result not meeting the criteria specified in the NVLAP LAP program handbook is identified as a nonconformity.

(c) *Proficiency testing nonconformities.* (1) Unsatisfactory participation in any proficiency testing program is a technical nonconformity which must be resolved in order to obtain initial accreditation or maintain accreditation.

(2) Proficiency testing nonconformities 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; or

(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 nonconformities and actions to be taken to resolve the nonconformities. Denial or suspension of accreditation will result from failure to resolve nonconformities.

[85 FR 60060, Sept. 24, 2020]

§ 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 nonconformities 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.

[66 FR 29221, May 30, 2001, as amended at 85 FR 60060, Sept. 24, 2020]

§ 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 nonconformity resolutions, verify reported changes in the laboratory's personnel, facilities or operations, or evaluate proficiency testing activities, when appropriate.

[85 FR 60060, Sept. 24, 2020]

§ 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 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 NIST Handbook 150, *NVLAP Procedures and General Requirements* (incorporated by reference, see § 285.16).

[85 FR 60061, Sept. 24, 2020]

§ 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 for purchase from the American National Standards Institute's eStandards Store at *http://webstore.ansi.org*. You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Room B119, Gaithersburg, MD. For access to the NIST campus, please contact NVLAP by phone at 301–975–4016 or by email at *NVLAP@nist.gov* to obtain instructions for visitor registration.

[66 FR 29221, May 30, 2001, as amended at 72 FR 36347, July 3, 2007; 85 FR 60061, Sept. 24, 2020]

§ 285.16 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at National Institute of Standards and Technology, National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, 100 Bureau Drive, Room B119, Gaithersburg, MD and is available from the source(s) listed in the following paragraph(s). It is also available for inspection at the National Archives and Records Administration (NARA). For

access to the NIST campus, please contact NVLAP by phone at 301–975–4016 or by email at *NVLAP@nist.gov* to obtain instructions for visitor registration. For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html*.

(a) National Institute of Standards and Technology (NIST), U.S. Department of Commerce, 100 Bureau Drive, Room B119, Gaithersburg, MD, 301–975–4016 *NVLAP@nist.gov*, *www.nist.gov/publications/*.

(1) NIST Handbook 150, *National Voluntary Laboratory Accreditation Program Procedures (NVLAP) and General Requirements,* authored by Dana S. Leaman and Bethany Hackett, 2020 Edition, August 2020, 2020 (*NVLAP Procedures and General Requirements*) *https://nvlpubs.nist.gov/nistpubs/hb/2020/NIST.HB.150-2020.pdf;* into §§ 285.8(a) and § 285.14.

(2) [Reserved]

(b) [Reserved]

[85 FR 60061, Sept. 24, 2020]

PART 286—NATIONAL VOLUNTARY CONFORMITY ASSESSMENT SYSTEM EVALUATION (NVCASE) PROGRAM

Sec.

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. 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 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 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 tothe 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:

(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.

AUTHORITY: 15 U.S.C. 272.

SOURCE: 85 FR 60905, Sept. 29, 2020, unless otherwise noted.

§ 287.1 Purpose and scope of this part.

(a) This part outlines Federal agencies' responsibilities for using conformity assessment to meet respective agency requirements in an efficient and cost-effective manner for the agency and its stakeholders. To reduce unnecessary complexity and make productive use of Federal resources, this part emphasizes that agencies should consider coordinating conformity assessment activities with those of other appropriate government agencies (Federal, State, and local) and with those in the private sector.

(b) Using conformity assessment in a manner consistent with this part supports U.S. Government efforts to meet trade obligations and demonstrate good regulatory practices, which reduces unnecessary obstacles to international trade and improves market access for products and services.

(c) This part applies to all agencies which set policy for, manage, operate, or use conformity assessment. This part does not preempt the agencies' authority and responsibility to make decisions authorized by statute or required to meet regulatory, procurement, or programmatic objectives and requirements. These decision-making activities include: determining the level of acceptable regulatory or procurement risk; setting the level of protection; balancing risk, cost, and availability of technology and technical resources (where statutes permit) in establishing regulatory, procurement, and program requirements.

(d) Each agency retains broad discretion in its selection and use of conformity assessment activities and may elect not to use or recognize alternative conformity assessment approaches if the agency deems the alternatives to be inappropriate, inadequate, or inconsistent with statutory criteria or programmatic objectives and requirements. Nothing contained in this part 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, procurement, or programmatic conformity assessment actions.

§ 287.2 Definitions.

For the purposes of this part:

Agency means any Executive Department, independent commission, board, bureau, office, government-owned or controlled corporation, or other establishment of the Federal Government. It also includes any regulatory commission or board, except for independent regulatory commissions insofar as they are subject to separate statutory requirements regarding policy setting, management, operation, and use of conformity assessment. 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 Office of

Management and Budget (OMB) Circular A–119 and the guidance in this part.

Conformity assessment is a demonstration, whether directly or indirectly, that specified requirements relating to a product, process, system, person, or body are fulfilled. Requirements for products, services, systems, persons, and organizations are those defined by law or regulation, by an agency in regulatory or procurement actions, or an agency programmatic policy. 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 related terminology and concepts, including a discussion of the value and benefits of conformity assessment, are contained in NIST Special Publication 2000–01, *ABCs of Conformity Assessment* (2018) found free of charge at: *https://doi.org/10.6028/NIST.SP.2000-01* and *NIST Special Publication 2000–02, Conformity Assessment Considerations for Federal Agencies*, found at: *https://doi.org/10.6028/NIST.SP.2000-02*. The definitions of conformity assessment related terminology included in these documents are based on voluntary consensus standards. See OMB Circular A–119 for a description of voluntary consensus standards and recommendations for their development and use by Federal agencies.

§ 287.3 Responsibilities of the National Institute of Standards and Technology.

(a) Coordinate issues related to agency conformity assessment program development, use, and implementation and issue guidance, training material, and other material to assist Federal agencies in understanding and applying conformity assessment to meet their requirements. Material is available at *https://www.standards.gov*.

(b) Chair the Interagency Committee on Standards Policy (ICSP); encourage participation in the ICSP; as well as provide resource support to the ICSP and its working groups related to conformity assessment issues, as needed.

(c) Work with agencies through the ICSP and other means to coordinate Federal, State, and local conformity assessment activities with private sector conformity assessment activities.

(d) Participate in the development of voluntary consensus standards, recommendations, and guidelines related to conformity assessment to ensure that Federal viewpoints are represented.

(e) Increase awareness of the importance of public and private sector conformity assessment through development and publication of conformity assessment resources. Material is available at *https://www.standards.gov*.

(f) To the extent that resources are available and upon request by a state government agency, work with that state agency to reduce duplication and complexity in state conformity assessment activities.

(g) Review, within five years from October 29, 2020, the effectiveness of the guidance in this part 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. Agencies may rely on NIST Special Publication 2000–02 *Conformity Assessment Considerations for Federal Agencies* found free of charge at *https://doi.org/10.6028/NIST.SP.2000-02*.

(b) Develop and implement conformity assessment in a manner that meets regulatory, procurement, and programmatic objectives; reduces unnecessary complexity for stakeholders; makes productive use of Federal resources; and meets international trade agreement obligations.

(c) Provide a rationale for its use of specified conformity assessment in rulemaking, procurement actions, and agency programs 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.

(d) Work with other Federal agencies to avoid unnecessary duplication and complexity in Federal conformity assessment activities.

(e) Consider leveraging the activities and results of other governmental agency and private sector programs in lieu of creating government-unique programs or to enhance the effectiveness of proposed new and existing conformity assessment.

(f) Give a preference for using voluntary consensus standards, guides, and recommendations related to conformity assessment in agency operations. Each agency retains responsibility for determining which, if any, of these documents are relevant to its needs. See OMB Circular A–119 for a description of voluntary consensus standards and recommendations for their development and use by Federal agencies.

(g) Participate, as needed, representing agency and Federal viewpoints, in efforts to develop voluntary consensus standards, guideline, and recommendations related to conformity assessment.

(h) Participate, as needed, representing agency and Federal viewpoints in efforts designed to improve coordination among governmental and private sector conformity assessment activities.

(i) Work with NIST, other Federal agencies, ICSP members, and the private sector to coordinate 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 trade of U.S. products and services.

(j) Assign an Agency Standards Executive the responsibility for coordinating agency-wide implementation of the guidance in this part who is situated in the agency's organizational structure such that the Agency Standards Executive is kept regularly apprised of the agency's regulatory, procurement, and other mission-related activities, and has sufficient authority within the agency to ensure implementation of the guidance in this part.

§ 287.5 Responsibilities of Agency Standards Executives.

Each Agency Standards Executive should:

(a) Carry out the duties in OMB Circular A–119 related to conformity assessment activities.

(b) Encourage effective use of agency conformity assessment related resources.

(c) Provide ongoing assistance and policy guidance to the agency on significant issues in conformity assessment.

(d) Contribute to the development and dissemination of:

(1) Internal agency policies related to conformity assessment issues; and

(2) Agency positions on conformity assessment related issues that are in the public interest.

(e) Work with other parts of the agency to develop and implement improvements in agency conformity assessment activities.

(f) Participate in the Interagency Committee on Standards Policy (ICSP) as the agency representative and member.

(g) Promote agency participation in ICSP working groups related to conformity assessment issues, as needed.

(h) Encourage agency participation in efforts related to the development of voluntary consensus standards, recommendations, and guidelines related to conformity assessment consistent with agency missions, authorities, priorities, and resources.

(i) Establish an ongoing process for reviewing the agency's conformity assessment programs and identify areas where efficiencies can be achieved through coordination within the agency and among other agencies and private sector conformity assessment activities.

SUBCHAPTER K—NIST EXTRAMURAL PROGRAMS

PART 290—REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

Sec.

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 sensse 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 reasearch 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 first on establishing its structure, operating style, and client base within a manageable service area.

§ 290.4 Terms and schedule of financial assistance.

The Secretary may provide up to 50 percent of the capital and annual operating and maintenance funds required to establish and support an MEP Center.

[82 FR 28995, June 27, 2017]

§ 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 nonprofit 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, nonprofit 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.

(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 solicit applications to establish a new Manufacturing Extension Partnership (MEP) Center or to operate a pre-existing MEP Center, the Director shall publish a notice of funding opportunity on *www.Grants.gov* requesting submission of competitive proposals from eligible organizations.

[86 FR 56183, Oct. 8, 2021]

§ 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 February 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.

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 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 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].

§ 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 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 it's 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 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 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 nonprofit 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 period 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 nonprofit 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 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, 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 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.

AUTHORITY: 15 U.S.C. 272 (b)(1) and (c)(3) and 278l.

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 278l), 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 deploy 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 lease 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.

(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 delivery 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 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 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 proposals 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 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 organizations; 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

Sec.

Subpart B—Assistance to United States Industry-Led Joint Research and Development Ventures

Subpart C—Assistance to Single-Proposer U.S. Businesses

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 assisted 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 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 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.

(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 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 ''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 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 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, nontransferable, 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 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 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.

(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 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]

PART 296—TECHNOLOGY INNOVATION PROGRAM

Subpart A—General

Sec.

Subpart B—The Competition Process

Subpart C—Dissemination of Program Results

AUTHORITY: 15 U.S.C. 278n (Pub. L. 110–69 section 3012)

SOURCE: 73 FR 35915, June 25, 2008, unless otherwise noted.

Subpart A—General

§ 296.1 Purpose.

(a) The purpose of the Technology Innovation Program (TIP) is to assist United States businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutes, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need within NIST's areas of technical competence.

(b) The rules in this part prescribe policies and procedures for the award and administration of financial assistance (grants and/or cooperative agreements) under the TIP. While the TIP is authorized to enter into grants, cooperative agreements, and contracts to carry out the TIP mission, the rules in this part address only the award of grants and/or cooperative agreements.

§ 296.2 Definitions.

Award means Federal financial assistance made under a grant or cooperative agreement.

Business or company means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Contractor means the legal entity to which a contract is made and which is accountable to the recipient, subrecipient, or contractor making the contract for the use of the funds provided.

Cooperative agreement refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal government and the recipient is to transfer something of value, such as money, property, or services to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal government; and substantial involvement is anticipated between the Federal government and the recipient during performance of the contemplated activity.

Critical national need means an area that justifies government attention because the magnitude of the problem is large and the societal challenges that need to be overcome are not being addressed, but could be addressed through high-risk, high-reward research.

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 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 TIP project, travel, equipment, materials and supplies, subcontracts, and other costs not categorized in the preceding examples. NIST shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

Director means the Director of the National Institute of Standards and Technology (NIST).

Eligible company means a small-sized or medium-sized business or company that satisfies the ownership and other requirements stated in this part.

Grant means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal government and the recipient is to transfer something of value, such as money, property, or services to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal government; and no substantial involvement is anticipated between the Federal government and the recipient during performance of the contemplated activity.

High-risk, high-reward research means research that:

(1) Has the potential for yielding transformational results with far-ranging or wide-ranging implications;

(2) Addresses areas of critical national need that support, promote, and accelerate innovation in the United States and is within NIST's areas of technical competence; and

(3) Is too novel or spans too diverse a range of disciplines to fare well in the traditional peer-review process.

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. NIST shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

Institution of higher education means an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a

bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time (20 U.S.C. 1001). For the purpose of this paragraph (l) only, the term *State* includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States. The term *Freely Associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Intellectual property means an invention patentable under title 35, United States Code, or any patent on such an invention, or any work for which copyright protection is available under title 17, United States Code.

Joint venture means a business arrangement that:

(1) Includes either:

(i) At least two separately owned companies that are both substantially involved in the project and both of which are contributing to the cost-sharing required under the TIP statute, with the lead company of the joint venture being an eligible company; or

(ii) At least one eligible company and one institution of higher education or other organization, such as a national laboratory, governmental laboratory (not including NIST), or nonprofit research institute, that are both substantially involved in the project and both of which are contributing to the cost-sharing required under the TIP statute, with the lead entity of the joint venture being either the eligible company or the institution of higher education; and

(2) May include additional for-profit companies, institutions of higher education, and other organizations, such as national laboratories and nonprofit research institutes, that may or may not contribute non-Federal funds to the project.

Large-sized business means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by the Program in the relevant FEDERAL REGISTER notice of availability of funds in accordance with § 296.20. In establishing this amount, the Program may consider the dollar value of the total revenues of the 1000th company in Fortune magazine's Fortune 1000 listing.

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 third party in-kind contributions. Cash may be contributed by any non-Federal source, including but not limited to recipients, state and local governments, companies, and nonprofits (except contractors working on a TIP project). Third party in-kind contributions include but are not limited to equipment, research tools, software, supplies, and/or services. The value of in-kind contributions shall be determined in accordance with § 14.23 of this title and will be prorated according to the share of total use dedicated to the TIP project. NIST shall determine the allowability of matching share costs in accordance with applicable Federal cost principles.

Medium-sized business means any business that does not qualify as a *small-sized business* or a *large-sized business* under the definitions in this section.

Member means any entity that is identified as a joint venture member in the award and is a signatory on the joint venture agreement required by § 296.8.

Nonprofit research institute means a nonprofit research and development entity or association organized under the laws of any state for the purpose of

carrying out research and development.

Participant means any entity that is identified as a recipient, subrecipient, or contractor on an award to a joint venture under the Program.

Person will be deemed to include corporations and associations existing under or authorized by the laws of the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Program or *TIP* means the Technology Innovation Program.

Recipient means an organization receiving an award directly from NIST under the Program.

Small-sized business means a business that is independently owned and operated, is organized for profit, has fewer than 500 employees, and meets the other requirements found in 13 CFR part 121.

Societal challenge means a problem or issue confronted by society that when not addressed could negatively affect the overall function and quality of life of the Nation, and as such justifies government attention.

State, except for the limited purpose described in paragraph (l) of this section, means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under the United States Housing Act of 1937.

Subaward means an award of financial assistance made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the legal agreement is called a contract, but does not include procurement of goods and services.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

Transformational results means potential project outcomes that enable disruptive changes over and above current methods and strategies. Transformational results have the potential to radically improve our understanding of systems and technologies, challenging the status quo of research approaches and applications.

United States owned company means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations, that has a majority ownership by individuals who are citizens of the United States.

§ 296.3 Types of assistance available.

Subject to the limitations of this section and § 296.4, assistance under this part is available to eligible companies or joint ventures that request either of the following:

(a) *Single company awards*: No award given to a single company shall exceed a total of $3,000,000 over a total of 3 years.

(b) *Joint venture awards*: No award given to a joint venture shall exceed a total of $9,000,000 over a total of 5 years.

§ 296.4 Limitations on assistance.

(a) The Federal share of a project funded under the Program shall not be more than 50 percent of total project costs.

(b) Federal funds awarded under this Program may be used only for direct costs and not for indirect costs, profits, or management fees.

(c) No large-sized business may receive funding as a recipient or subrecipient of an award under the Program. When procured in accordance with procedures established under the Procurement Standards required by part 14 of Subtitle A of this title, recipients may procure supplies and other expendable property, equipment, real property and other services from any party, including large-sized businesses.

(d) If a project ends before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

§ 296.5 Eligibility requirements for companies and joint ventures.

Companies and joint ventures must be eligible in order to receive funding under the Program and must remain eligible throughout the life of their awards.

(a) A company shall be eligible to receive an award from the Program only if:

(1) The company is a small-sized or medium-sized business that is incorporated in the United States and does a majority of its business in the United States; and

(2) Either

(i) The company is a United States owned company; or

(ii) The company is owned by a parent company incorporated in another country and the Program finds that:

(A) The company's participation in TIP 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, and to procure parts and materials from competitive United States suppliers; and

(B) That the parent company 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 to receive funding under the Program; affords to 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) NIST may suspend a company or joint venture from continued assistance if it determines that the company, the country of incorporation of the company or a parent company, or any member of 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) Members of joint ventures that are companies must be incorporated in the United States and do a majority of their business in the United States and must comply with the requirements of paragraph (a)(2) of this section. For a joint venture to be eligible for assistance, it must be comprised as defined in § 296.2.

§ 296.6 Valuation of transfers.

(a) 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 another separately-owned joint venture member.

(b) 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. Best customer price means 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.

§ 296.7 Joint venture registration.

Joint ventures selected for assistance under the Program must notify the Department of Justice and the Federal Trade Commission under section 6 of the National Cooperative Research Act of 1984, as amended (15 U.S.C. 4305). No funds will be released prior to receipt by the Program of copies of such notification.

§ 296.8 Joint venture agreement.

NIST shall not issue a TIP award to a joint venture and no costs shall be incurred under a TIP 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.

§ 296.9 Activities not permitted for joint ventures.

The following activities are not permissible for TIP-funded joint ventures:

(a) 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;

(b) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the marketing, distribution, or provision by any person who is a party to such joint venture of any product, process, or service, other than the distribution among the parties to such venture, in accordance with such venture, of a product, process, or service produced by such venture, the marketing of proprietary information, such as patents and trade secrets, developed through such venture, or the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture; and

(c) Entering into any agreement or engaging in any other conduct:

(1) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture; or

(2) 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.

§ 296.10 Third party in-kind contribution of research services.

NIST shall not issue a TIP award to a single recipient or joint venture whose proposed budget includes the use of third party in-kind contribution of research as cost share, and no costs shall be incurred under such a TIP project, until such time as an agreement between the recipient and the third party contributor of in-kind research has been executed by both parties and approved by NIST.

§ 296.11 Intellectual property rights and procedures.

(a) *Rights in data.* Except as otherwise specifically provided for in an award, authors may copyright any work that is subject to copyright and was developed under an award. When claim is made to copyright, the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Federal government sponsorship shall be affixed to the work when and if the work is delivered to the Federal government, is published, or is deposited for registration as a published work in the U.S. Copyright Office. The copyright owner shall grant to the Federal government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such works to reproduce, publish, or otherwise use the work for Federal purposes.

(b) *Invention rights.* (1) Ownership of inventions developed from assistance provided by the Program under § 296.3(a) shall be governed by the requirements of chapter 18 of title 35 of the United States Code.

(2) Ownership of inventions developed from assistance provided by the Program under § 296.3(b) may vest in any participant in the joint venture, as agreed by the members of the joint venture, notwithstanding section 202(a) and (b) of title 35, United States Code. Title to any such invention shall not be transferred or passed, except to a participant in the joint venture, until the expiration of the first patent obtained in connection with such invention. In accordance with § 296.8, joint ventures will provide to NIST a copy of their written agreement that defines the disposition of ownership rights among the participants of the joint venture, including the principles governing the disposition of intellectual property developed by contractors and subcontractors, as appropriate, and that complies with these regulations.

(3) The United States reserves a nonexclusive, nontransferable, irrevocable paid-up license, to practice or have practiced for or on behalf of the United States any inventions developed using assistance under this section, but shall not in the exercise of such license publicly disclose proprietary information related to the license. Nothing in this

subsection shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(4) Should the last existing participant in a joint venture cease to exist prior to the expiration of the first patent obtained in connection with any invention developed from assistance provided under the Program, title to such patent must be transferred or passed to a United States entity that can commercialize the technology in a timely fashion.

(c) *Patent procedures.* Each award by the Program will 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 recipient through the Interagency Edison extramural invention reporting system (iEdison), including the subject inventions of recipients, including members of the joint venture (if applicable), subrecipients, and contractors of the recipient or joint venture members.

§ 296.12 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 is to monitor project performance against the Program's mission as required by the Government Performance and Results Act (GPRA) mandate for program evaluation. The purpose of the financial reporting is to monitor the status of project funds. The audit standards to be applied to TIP awards are the ''Government Auditing Standards'' (GAS) issued by the Comptroller General of the United States and any Program-specific audit guidelines or requirements prescribed in the award terms and conditions. To implement paragraph (f) of § 14.25 of this title, audit standards and award terms may stipulate that ''total Federal and non-Federal funds authorized by the Grants Officer'' means the total Federal and non-Federal funds authorized by the Grants Officer annually.

Subpart B—The Competition Process

§ 296.20 The selection process.

(a) To begin a competition, the Program will solicit proposals through an announcement in the FEDERAL REGISTER, which will contain information regarding that competition, including the areas of critical national need that proposals must address. An Evaluation Panel(s) will be established to evaluate proposals and ensure that all proposals receive careful consideration.

(b)(1) A preliminary review will be conducted to determine whether the proposal:

(i) Is in accordance with § 296.3;

(ii) Complies with either paragraph (a) or paragraph (c) of § 296.5;

(iii) Addresses the award criteria of paragraphs (a) through (c) of § 296.22;

(iv) Was submitted to a previous TIP competition and if so, has been substantially revised; and

(v) Is complete.

(2) Complete proposals that meet the preliminary review requirements described in paragraphs (b)(1)(i) through (v) of this section will be considered further. Proposals that are incomplete or do not meet any one of these preliminary review requirements will normally be eliminated.

(c) The Evaluation Panel(s) will then conduct a multi-disciplinary peer review of the remaining proposals based on the evaluation criteria listed in § 296.21 and the award criteria listed in § 296.22. In some cases NIST may conduct oral reviews and/or site visits. The Evaluation Panel(s) will present funding recommendations to the Selecting Official in rank order for further consideration. The Evaluation Panel(s) will not recommend for further consideration any proposal determined not to meet all of the eligibility and award requirements of this part and the FEDERAL REGISTER notice announcing the availability of funds.

(d) In making final selections, the Selecting Official will select funding recipients based upon the Evaluation Panel's rank order of the proposals and the following selection factors: assuring an appropriate distribution of funds among technologies and their applications, availability of funds, and/or Program priorities. The selection of proposals by 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. This may include requesting that the proposer delete from the scope of work a particular task that is deemed by NIST to be inappropriate for support against the evaluation criteria. NIST also reserves the right to reject a proposal where information is uncovered that raises a reasonable doubt as to the responsibility of the proposer. The final approval of selected proposals and award of assistance will be made by the NIST Grants Officer as described in the FEDERAL REGISTER notice announcing the competition. The award decision of the NIST Grants Officer is final.

§ 296.21 Evaluation criteria.

A proposal must be determined to be competitive against the Evaluation Criteria set forth in this section to receive funding under the Program. Additionally, no proposal will be funded unless the Program determines that it has scientific and technical merit and that the proposed research has strong potential for meeting identified areas of critical national need.

(a)(1) The proposer(s) adequately addresses the scientific and technical merit and how the research may result in intellectual property vesting in a United States entity including evidence that:

(i) The proposed research is novel;

(ii) The proposed research is high-risk, high-reward;

(iii) The proposer(s) demonstrates a high level of relevant scientific/technical expertise for key personnel, including contractors and/or informal collaborators, and have access to the necessary resources, for example research facilities, equipment, materials, and data, to conduct the research as proposed;

(iv) The research result(s) has the potential to address the technical needs associated with a major societal challenge not currently being addressed; and

(v) The proposed research plan is scientifically sound with tasks, milestones, timeline, decision points and alternate strategies.

(2) Total weight of (a)(1)(i) through (v) is 50%.

(b)(1) The proposer(s) adequately establishes that the proposed research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base and to address areas of critical national need through transforming the Nation's capacity to deal with a major societal challenge(s) that is not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer including an explanation in the proposal:

(i) Of the potential magnitude of transformational results upon the Nation's capabilities in an area;

(ii) Of how and when the ensuing transformational results will be useful to the Nation; and

(iii) Of the capacity and commitment of each award participant to enable or advance the transformation to the proposed research results (technology).

(2) Total weight of (b)(1)(i) through (iii) is 50%.

§ 296.22 Award criteria.

NIST must determine that a proposal successfully meets all of the Award Criteria set forth in this section for the proposal to receive funding under the Program. The Award Criteria are:

(a) The proposal explains why TIP support is necessary, including evidence that the research will not be conducted within a reasonable time period in the absence of financial assistance from TIP;

(b) The proposal demonstrates that reasonable and thorough efforts have been made to secure funding from alternative funding sources and no other alternative funding sources are reasonably available to support the proposal;

(c) The proposal explains the novelty of the research (technology) and demonstrates that other entities have not already developed, commercialized, marketed, distributed, or sold similar research results (technologies);

(d) The proposal has scientific and technical merit and may result in intellectual property vesting in a United States entity that can commercialize the technology in a timely manner;

(e) The proposal establishes that the research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base; and

(f) The proposal establishes that the proposed transformational research (technology) has strong potential to address areas of critical national need through transforming the Nation's capacity to deal with major societal challenges that are not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer.

Subpart C—Dissemination of Program Results

§ 296.30 Monitoring and evaluation.

The Program will provide monitoring and evaluation of areas of critical national need and its investments through periodic analyses. It will develop methods and metrics for assessing impact at all stages. These analyses will contribute to the establishment and adoption of best practices.

§ 296.31 Dissemination of results.

Results stemming from the analyses required by § 296.30 will be disseminated in periodic working papers, fact sheets, and meetings, which will address the progress that the Program has made from both a project and a portfolio perspective. Such disseminated results will serve to educate both external constituencies as well as internal audiences on research results, best practices, and recommended changes to existing operations based on solid analysis.

§ 296.32 Technical and educational services.

(a) Under the Federal Technology Transfer Act of 1986, NIST 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, NIST 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 NIST enter into a cooperative research and development agreement with a recipient of an award under the Program which provides for the payment of Program funds from the award recipient to NIST.

(c) From time to time, TIP may conduct public workshops and undertake other educational activities to foster the collaboration of funding Recipients with other funding resources for purposes of further development and diffusion of TIP-related technologies. In no event will TIP provide recommendations, endorsements, or approvals of any TIP funding Recipients to any outside party.

§ 296.33 Annual report.

The Director shall submit annually to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a report describing the Technology Innovation Program's activities, including a description of the metrics upon which award funding decisions were made in the previous fiscal year, any proposed changes to those metrics, metrics for evaluating the success of ongoing and completed awards, and an evaluation of ongoing and completed awards. The first annual report shall include best practices for

management of programs to stimulate high-risk, high-reward research.

PARTS 297–299 [RESERVED]